Rhinehart v. Rowland

United States District Court for the Northern District of California

November 13, 1992, Decided ; November 16, 1992, Filed; November 17, 1992, Entered

Case No. C 90-2335 BAC, C 92-0240 BAC

Reporter: 1992 U.S. Dist. LEXIS 20459

MICHEAL RHINEHART, Plaintiff, v. JAMES ROWLAND AND CHARLES MARSHALL, Defendants.

Judges: [*1] PATEL

Opinion by: MARILYN HALL PATEL

Opinion

ORDER

Plaintiff Micheal Rhinehart, a prisoner at Pelican Bay State Prison, proceeding pro se and seeking leave to proceed *in forma pauperis,* brings this action under *42 U.S.C. § 1983*. Plaintiff seeks declaratory and injunctive relief as well as damages for deprivations of his civil rights. Venue is proper in this district as the claims arose in Del Norte County. 28 U.S.C. § 1391(b). Plaintiff filed two complaints that appear to raise the same claims; both will be disposed by this order.

PROCEDURAL BACKGROUND

The essential facts and law controlling plaintiff's claims are fully set out in the court's order of December 12, 1990 issued by the Honorable Marilyn Hall Patel, a copy of which is attached hereto for the convenience of the parties. The only difference between C 90-2335 and C 92-0240 is that, since the filing of case no. C 90-2335 plaintiff has appeared before a classification committee for retention.

In this court's order of December 12, 1990, plaintiff was given 45 days to amend his complaint. If he failed to amend his complaint service was to be ordered. Plaintiff [*2] did, not amend his complaint. Moreover, the resent complaint filed by plaintiff does not materially alter the allegations contained in the 1990 case. Accordingly, the court orders the following:

1. Plaintiff's request to proceed *in forma pauperis* is granted.

2. The Clerk of the Court shall issue a summons and the U.S. Marshal shall serve a copy of the instant complaint and a copy of this order on defendants.

3. The Clerk of the Court shall send by certified mail a copy of this order to plaintiff.

4. Defendants shall prepare a special report investigating the allegations in plaintiff's complaint. This report shall include a factual summary of the incidents that form the basis of this action. The objective of the report is to give the court a detailed factual account of this matter, potentially leading to summary disposition. This report shall conform to the requirements of *Fed. R. Civ. P. 56(e) - (g)*. Defendants shall file this report within thirty (30) days of the date of service of this order. Defendants shall promptly serve plaintiff with a copy of the report. Plaintiff shall have twenty (20) days after he receives the report to file a response to it.

IT IS SO ORDERED.

[*3] Dated: Nov. 13, 1992

Barbara A. Caulfield

United States District Judge

ORDER - December 12, 1990, Filed; December 17, 1990, Entered

INTRODUCTION

Plaintiff Micheal Rhinehart, a prisoner at Pelican Bay State Prison, proceeding *pro se* and seeking leave to proceed *in forma pauperis,* brings this action under *42 U.S.C. § 1983*. Plaintiff seeks declaratory and injunctive relief as well as damages for deprivations of his civil rights. Venue is proper in this district as the claims arose in Del Norte County. 28 U.S.C. § 1391(b).

BACKGROUND

Plaintiff was initially confined to secured housing for a prescribed term after a disciplinary violation. Plaintiff is now confined to secured housing or segregation for an indeterminate period. As a result he has spent nine and one half years in segregation. Plaintiff alleges that his continued indeterminate confinement in segregated secured housing violates both the *Eighth Amendment* and the Fourteenth Amendment.

Plaintiff was classified to an indeterminate term in segregation on charges that he is a member of a prison gang. Plaintiff has denied the charges, [*4] but the prison authorities have segregated him on the basis of a

confidential source that he cannot challenge because he has not been informed of the content of the information. Further plaintiff alleges that the only process available to challenge his classification is participation in a debriefing review which requires a polygraph examination. Plaintiff alleges that the polygraph is unreliable because he has a heart murmur and that a polygraph exam deprives him of his right not to incriminate himself.

Plaintiff was sentenced to life with the possibility of parole. Plaintiff complains that indeterminate confinement in segregation increases the severity of his sentence because as long as he is confined in segregation he is not eligible for parole, therefore his permanent housing assignment is tantamount to a life sentence without parole.

Plaintiff alleges that permanent confinement in segregation is cruel and unusual punishment because he is deprived of contact with other prisoners, required to exercise alone in a 20 by 10 foot yard, denied contact visitation with his family and suffering from mental problems created by the isolation.

DISCUSSION

The Supreme Court has directed [*5] federal trial courts to read *pro se* papers liberally, *Hughes v Rowe* 449 U.S. 5, 9, 66 L. Ed. 2d 163, 101 S. Ct. 173 (1980)(per curiam). And a plaintiff is not required to plead his evidence "or specific factual details not ascertainable in advance of discovery," *Gibson v U.S.,* 781 F.2d 1334, 1340 (9th Cir. 1986), but a plaintiff must state the specific acts of defendants that violated plaintiff's rights to meet the requirements of *Rule 8(a)(2) of the Federal Rules of Civil Procedure*. *Hutchinson v U.S.,* 677 F.2d 1322, 1328 n.5 (9th Cir. 1982).

A *pro se* plaintiff is entitled to a most liberal amendment policy, meaning that leave to amend his complaint should be freely granted with an explanation as to the defects in his complaint if it does not properly state a colorable claim. *Eldridge v Block,* 832 F.2d 1132, 1135-1137 (9th Cir. 1987). However, where a plaintiff is seeking permission to proceed *in forma pauperis,* the court must review his complaint before serving it upon defendants to determine whether plaintiff has some colorable claim upon which he might be entitled to relief. The [*6] complaint should be dismissed with prejudice only if frivolous. *Neitzke v Williams,* 490 U.S. 319, 109 S. Ct. 1827, 1833-1834, 104 L. Ed. 2d 338 (1989). The court will review plaintiff's compliant with these standards in mind.

As a threshold matter, plaintiff's challenge to the length of his sentence may only be brought by way of a petition for habeas corpus. *Preiser v Rodriguez*, 411 U.S. 475, 500, 36 L. Ed. 2d 439, 93 S. Ct. 1827 (1973); *Ybarra v Reno Thunderbird Mobile Home Village,* 723 F.2d 675, 681-82 (9th Cir. 1984). Prisoners in state custody are required to exhaust state judicial remedies by presenting the highest state court available with a fair opportunity to rule on the merits of their claims prior to bringing those claims to federal courts. *28 U.S.C. Sec.2254*(b. & c.); *Rose v Lundy* 455 U.S. 509, 71 L. Ed. 2d 379, 102 S. Ct. 1198 (1982). An action for damages may continue even if the petition for writ of habeas corpus must be dismissed for a failure to exhaust state remedies, see *Preiser, supra;Wolff vMcDonnell,* 418 U.S. 539, 554, 41 L. Ed. 2d 935, 94 S. Ct. 2963 (1974).

However, the Ninth Circuit holds that where a prisoner [*7] brings a civil rights action seeking only monetary and declaratory relief which raises constitutional issues that directly relate to the fact or duration of confinement and are cognizable in habeas, competing interests underlying habeas relief, including exhaustion requirement, must prevail. *Young v Kenny* 907 F.2d 874 (9th Cir. 1990). Therefore, plaintiff's challenge to the length of his confinement is dismissed on exhaustion grounds. Plaintiff will have to bring his claim that his sentence has been changed to life without the possibility of parole in state court.

MERITS

To state a claim under *42 U.S.C. § 1983*, a plaintiff must allege that a right secured by the Constitution and laws of the United States was violated by a person acting under color of state law. *West v Atkins,* 487 U.S. 42, 108 S. Ct. 2250, 2255, 101 L. Ed. 2d 40 (1988); *Ketchum v Alameda County,* 811 F.2d 1243, 1245 (9th Cir. 1987).

I Conditions in Segregation

The *Eighth Amendment* requires neither that prisons be comfortable nor that they provide every amenity that one might find desirable. [*8] *Hoptowit v. Ray,* 682 F.2d 1237, 1246 (9th Cir. 1982), *on appeal after remand, Hoptowit v. Spellman,* 753 F.2d 779 (9th Cir. 1985). Rather the *Eighth Amendment* proscribes the "unnecessary and wanton infliction of pain", which includes those sanctions that are so "totally without penological justification" that it results in the gratuitous infliction of suffering." *Id.* This includes not only physical torture, but any punishment incompatible with "the evolving standards of decency that mark the progress of a maturing society." *Id.* In determining whether a challenged condition violates "evolving standards of decency" courts may consider opinions of experts and pertinent organizations. *Id.*

Convicted prisoners do not have a constitutional right to contact visitation. *Toussaint v McCarthy* 801 F.2d 1080, 1113-14 (9th Cir. 1986). Therefore, plaintiff's claim that

the denial of contact visits offends the Constitution is dismissed as lacking an arguable basis in law. *Neitzke v Williams, supra.* However, the denial of exercise is cognizable as a violation of [*9] civil rights. *Spain v Procunier* 600 F.2d 189, 190 (9th Cir. 1979); *Toussaint v Rushen,* 553 F. Supp. 1365, 1380 (N.D.Cal. 1983)*aff'd in pt, vac't in pt., Toussaint v Yockey* 722 F.2d 1490, 1492 (9th Cir. 1984). Prisoners may not be deprived of all exercise, *Toussaint v McCarthy* 597 F. Supp. 1388, 1393 (N.D. Cal. 1984), but a short term denial of exercise to an inmate for disciplinary reasons or security reasons probably does not violate the *Eighth Amendment*. *Id.* at 1412. It is unclear whether movement confined to an area of ten by twenty feet as a permanent arrangement satisfies the physical and mental needs of a prisoner for exercise. Therefore, the court construes the claim to rise to the level of cruel and unusual punishment and will require the defendants to address the claim.

Misclassification itself does not inflict pain so as to be cruel and unusual punishment violative of the *Eighth Amendment*. *Hoptowit v Ray,* 682 F.2d 1237, 1255-56 (9th Cir. 1982); *Newman v Alabama,* 559 F.2d 283, 287 [*10] (5th Cir.), *reh'g denied* 564 F.2d 97 (5th Cir.1977), *cert. denied,438 U.S. 915, 57 L. Ed. 2d 1160, 98 S. Ct. 3144rev'd on other grounds sub nom. Alabama v. Pugh,* 438 U.S. 781, 57 L. Ed. 2d 1114, 98 S. Ct. 3057 (1978); *Ramos v Lamm,* 639 F.2d 559, 566-67 (10th Cir. 1980)*cert. denied450 U.S. 1041, 68 L. Ed. 2d 239, 101 S. Ct. 1759 (1981)*; *Capps v Atiyeh,* 559 F. Supp. 894, 990 (D.Ore.1983); *Grubbs v Bradley,* 552 F. Supp. 1052, 1124 (M.D.Tenn. 1982); *Murphy v Fenton,* 464 F. Supp. 53, 57 (M.D.Pa. (1979). The *Eighth Amendment* is not violated unless confinement conditions are wanton, unnecessary or disproportionate to offense. *Jackson v Meachum,* 699 F.2d 578, 583 (1st Cir. 1983). And where confinement in solitary is the result of a shortage of prison space there is no violation of the *Eighth Amendment* although the inmate is denied entry to general population, regular yard recreation, contact visitation, personal access to law and recreational libraries, community religious services, and work or vocational training. [*11] *Gibson v Lynch,* 652 F.2d 348 (3d Cir. 1981).

Furthermore, the consequences of plaintiff's confinement conditions do not rise to the level of cruel and unusual punishment. Although plaintiff is alleging these conditions are the cause of his mental problems, and does not base his claim on deliberate indifference to medical needs, his medical needs must be serious to justify an *Eighth Amendment* claim. "A 'serious' medical need is one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention. " *Ramos v. Lamm,* 639 F.2d at 575 (quoting *Laaman v. Helgemoe,* 437 F. Supp. 269, 311 (D.N.N. 1977)). Plaintiff alleges that his permanent isolation under severe conditions in Pelican Bay State Prison secured housing has produced mental problems to the degree that he suffers from despair, inability to focus or concentrate, headaches and sleeplessness. While the court sympathizes with plaintiff's ailments, his complaints are not so severe as to constitute cruel and unusual punishment. Therefore, [*12] this claim is dismissed.

II Violations of Due Process

There is no federally protected right not to be placed in more onerous conditions of confinement such as administrative segregation. *Hewitt v. Helms,* 459 U.S. 460, 468, 74 L. Ed. 2d 675, 103 S. Ct. 864 (1983). However, liberty interests protected by the Due Process Clause of the Constitution may be created by state law or regulation which places substantive limitations on the discretion of officials. *Board of Pardons v. Allen,* 482 U.S. 369, 96 L. Ed. 2d 303, 107 S. Ct. 2415 (1987); *Hewitt, supra,* 459 U.S. at 471-72.

In *Toussaint v. McCarthy,* 801 F.2d 1080, 1098 (9th Cir. 1986), *cert. denied,481 U.S. 1069, 107 S. Ct. 2462, 95 L. Ed. 2d 871 (1987)* the court found that California has created a liberty interest in freedom from administrative segregation. The amount of process due is a matter of law to be decided by federal court. See, *Quick v. Jones,* 754 F.2d 1521, 1523 (9th Cir. 1985). In *Toussaint* the court concluded that when prison officials initially determine whether a prisoner is to be segregated for administrative reasons due process [*13] only requires the following procedures: 1) prison officials must hold an informal nonadversary hearing within a reasonable time after the prisoner is segregated; 2) prison officials must inform the prisoner of the charges against the prisoner or their reasons for considering segregation; and 3) prison officials must allow the prisoner to present his views.

The Ninth Circuit holds that there must be some indicia of reliability for the evidence cited by prison authorities to support prison disciplinary or administrative segregation actions. See, *Zimmerlee v. Keeney,* 831 F.2d 183, 186 (9th Cir. 1987); *Cato v. Rushen,* 824 F.2d 703, 705 (9th Cir. 1987). And the Ninth Circuit requires that the official charged with deciding to retain an inmate in administrative segregation must be the official to whom the inmate presents his views. *Toussaint v McCarthy* 926 F.2d 800 (9th Cir. 1990). Further, the Ninth Circuit recently upheld the use of polygraph exams as a helpful tool in determining gang association where the exam is not the sole basis for a segregation decision and the exam is not treated as unfailingly [*14] accurate. *Toussaint v McCarthy,* 926 F.2d 800 (9th Cir. 1990).

Plaintiff has alleged that his retention in administrative segregation is based on information that lacks the indicia

of reliability and that he cannot rejoin the general population without a polygraph that is unreliable because of his heart condition. The court has serious reservations about the merits of plaintiff's polygraph theory. However, that issue is more appropriately left as a question of fact to be dealt with after defendant's have responded. Therefore, the court finds that plaintiff has stated a claim for the denial of due process.

REMEDIES

Liability may be imposed on an individual defendant under *Section 1983* if the plaintiff can show that the defendant proximately caused the deprivations of his federally protected rights of which he complains. *Leer v. Murphy,* 844 F.2d 628, 634 (9th Cir. 1988); *Harris v. City of Roseburg,* 664 F.2d 1121 (9th Cir. 1981). Respondeat superior is not a sufficient basis for imposing liability under *Sec. 1983*. *Monell v. New York City ofSocial Services,* 436 U.S. 658, 663-64, 56 L. Ed. 2d 611, 98 S. Ct. 2018 n.7 (1978); [*15] *Ybarra v. Reno Thunderbird Mobile Home Village,* 723 F.2d 675, 680 (9th Cir. 1984). State officials are not subject to suit under *§ 1983* unless they play an affirmative part in the alleged deprivation. *King v. Atiyeh,* 814 F.2d 565, 568 (9th Cir. 1987). In order to allege facts sufficient to show a jurisdictional basis for imposing liability, *Franklin v. Murphy,* 745 F.2d 1221, 1234 (9th Cir. 1984), a plaintiff must allege facts to show that the defendant proximately caused the deprivation of rights of which plaintiff complains, *Harris, supra* or that defendant in a supervisory capacity failed to properly train or supervise personnel resulting in the alleged deprivation, that the alleged deprivation resulted from official policy or custom for which defendant was responsible, or that defendant knew of the alleged misconduct and failed to act to prevent future misconduct. *Ybarra, supra* at 680-81; *Taylor v. List,* 880 F.2d 1040 (9th Cir. 1989).

Plaintiff has named the Warden at Pelican Bay State Prison [*16] and the Director of the California Department of Corrections as defendants. Plaintiff has not linked the named defendants to his injuries. Therefore, plaintiff will be given leave to amend to state facts imposing liability upon the named defendants or upon other appropriate defendants.

Under 1983 a successful plaintiff may recover compensatory and punitive damages according to principles derived from the common law or torts, *Memphis Community SchoolDistrict v. Stachura,* 477 U.S. 299, 306, 91 L. Ed. 2d 249, 106 S. Ct. 2537 (1986), but the abstract value of the constitutional right may not form the basis for 1983 damages, *id.* at 308. Where compensatory damages cannot be quantified, a plaintiff may be able to recover presumed damages. *Id.* at 310-311 and n.14. Nominal damages are also available for a violation of 1983. *Carey v. Piphus,* 435 U.S. 247, 266-67, 55 L. Ed. 2d 252, 98 S. Ct. 1042 (1978); *Draper v. Coombs,* 792 F.2d 915, 921-22 (9th Cir. 1986). Punitive damages may be awarded in a *Section 1983* suit "when defendant's conduct is shown to be motivated by evil motive or intent, or when it [*17] involves reckless or callous indifference to the federally protected rights of others". *Smith v. Wade,* 461 U.S. 30, 56, 75 L. Ed. 2d 632, 103 S. Ct. 1625 (1983).

When seeking injunctive relief a plaintiff does not have to establish the same narrow causal connection between his injuries and a responsible defendant as when seeking damages from an individual. *Leer v Murphy* 844 F.2d 628 (9th Cir. 1988). Plaintiff has stated a colorable claim under the *Eighth Amendment* for the denial of exercise and the imposition of conditions of isolation which threaten his mental health. Further, plaintiff has stated a claim for the denial of due process in his retention in administrative segregation. And the named defendants have the power to effect relief.

CONCLUSION

ACCORDINGLY, IT IS ORDERED that:

1. Plaintiff's challenge to the length of his sentence is dismissed for lack of exhaustion of state judicial remedies.

2. Plaintiff's claim for a violation of the *Eighth Amendment* on the ground that he has been deprived of contact visitation is dismissed as legally frivolous.

3. Plaintiff has failed to allege facts imposing liability upon defendant Rowland or defendant [*18] Marshall. Plaintiff may file, within 45 days of his receipt of this Order, an amended complaint that alleges facts linking the named defendants or other appropriate defendants to his claim for damages.

4. If plaintiff does not amend, the court will then grant plaintiff leave to proceed *in forma pauperis* and will direct the Clerk of the Court to issue summons, and the United States Marshal to serve on the named defendants, without prepayment of fees, a copy of the complaint, summons and this Order.

5. At the time that service is ordered, the court will require the defendants, within 30 days of service, to prepare, file and serve on plaintiff a special report investigating the allegations in plaintiff's complaint with respect to the claims found colorable by this court. The report shall include a factual summary of the incidents which form the basis for this action. The objective of the report is to give the court a detailed factual account of these matters. This report shall conform to the requirements of *Fed. R. Civ. P. 56(e)*. Plaintiff may file a response to the special report within 20 days after he receives it.

The Clerk of the Court shall serve by certified mail a copy [*19] of this Order upon plaintiff.

IT IS SO ORDERED.

DATED: DEC 12 1990

MARILYN HALL PATEL

United States District Judge