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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

LERROY LEWIS,)
)
 Plaintiff,)
)
 v.) CIVIL ACTION NO. 81-0894-R
)
 TERRELL D. HUTTO, et al.,)
)
 Defendants.)

MEMORANDUM OPINION

This matter comes before the court on the motion of defendant Terrell D. Hutto for summary judgment under Rule 56(b). See Fed. R. Civ. P. 56(b). In addition, defendant Andrew J. Winston moves to dismiss the action for failure to state a valid claim. See id. 12(b)(6). The court grants these motions for the reasons stated below.

On October 13, 1981, Leroy Lewis, a prisoner held at the Richmond City Jail, filed a section 1983 action against Hutto and Winston. See 42 U.S.C. § 1983 (1976). Hutto is the director of the Virginia Department of Corrections. Winston is the city sheriff and keeper of the jail. Lewis alleges in his complaint that he fell in the shower and broke his hand on September 10, 1981. He asserts that this fall was caused by a puddle of water that had collected at the entrance to the shower. Lewis argues that this water was present, because Winston recently had decided to stop providing mops and buckets to the inmates. Lewis claims that this failure to supply cleaning equipment violated his eighth amendment rights.

Hutto moves for summary judgment on the ground that Lewis had not been in state custody at any time since he entered the Richmond City Jail on October 15, 1980. Hutto supports this allegation with an affidavit from the criminal records custodian for the Virginia Department of Corrections. Thus, the court dismisses the claims against Hutto, because

he has no direct control over Lewis' living conditions. See Vinnedge v. Gibbs, 550 F.2d 926, 928 (4th Cir. 1977).

Winston moves to dismiss the complaint on two grounds. First, he contends that the complaint does not state a valid section 1983 claim, because it fails to allege that he was involved in the incident giving rise to the claim. The plaintiff, however, has defeated this ground by alleging that Winston himself promulgated the rule prohibiting inmate use of mops and buckets.

Second, Winston argues that the incident of which Lewis complains does not rise to the level of a constitutional deprivation. Lewis asserts that Winston's decision not to provide cleaning equipment qualifies as an eighth amendment violation. This action, however, does not constitute cruel or unusual punishment. See Rhodes v. Chapman, 101 S. Ct. 2392, 2399 (1981). Winston's alleged negligence in remedying the shower conditions could conceivably qualify as a fourteenth amendment violation. See Parratt v. Taylor, 101 S. Ct. 1908, 1912-13 (1981). The court, however, rules that simple negligence in maintaining prison conditions does not qualify as a due process deprivation. See id. at 1917 (Stewart, J., concurring). This conclusion holds despite the fact that Virginia has not yet waived its sovereign immunity with respect to tort claims. See Va. Code § 8.01-195 (1977). The court, therefore, dismisses Lewis' complaint for failure to state a cognizable section 1983 claim.

United States District Judge

Date: _____