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

Richmond Division

WILLIAM JOSEPH ROBINSON,)
)
 Plaintiff,)
)
 v.) CIVIL ACTION NO. 81-0619-R
)
T. D. HUTTO,)
)
 Defendant.)

MEMORANDUM OPINION

This matter comes before the court on the defendant's motion under Rule 12(b)(6) to dismiss the complaint for failure to state a cognizable claim. See Fed. R. Civ. P. 12(b)(6). The defendant moves, in the alternative, for summary judgment under Rule 56. See id. 56(b). The plaintiff has countered with a motion under Rule 20 to join as a party to this action the Juvenile and Domestic Relations District Court Judge who sentenced him. See id. 20(a). The court grants the plaintiff's Rule 20 motion. The court, however, also grants the defendant's motion for summary judgment.

On September 4, 1979, the Juvenile Court of the City of Richmond convicted William Joseph Robinson of larceny. It sentenced him to twelve months in jail. At the time of this conviction, Robinson was seventeen years of age. He, therefore, qualified as a juvenile. See Va. Code § 16.1-228 D (Supp. 1980). Virginia law requires the Virginia Department of Corrections to keep juveniles apart from adult prisoners. See id. § 53-206.2 (1978). The juvenile court, however, erroneously issued an order committing Robinson to the Adult Services of the Department of Corrections.

Robinson began serving his sentence at the Richmond City Jail. On September 13, 1979, he was taken to the Southampton Receiving Center. In compliance with the juvenile court's order, the officials at that facility housed him with adult prisoners. Robinson claims that an adult inmate cut him with a knife during his stay at Southampton.

On October 2, 1979, the Department of Corrections transferred Robinson to the St. Brides Correctional Center. Prison officials there also relied on the juvenile court's order. As a consequence, Robinson again was kept with adult prisoners. He claims that, during his incarceration at St. Brides, adult inmates sexually assaulted him. A short time after the transfer to St. Brides, the Department of Corrections discovered the error in the commitment order. Prison officials immediately segregated Robinson from the adult population. On October 13, 1981, the Department of Corrections returned him to the Richmond City Jail.

On July 7, 1981, Robinson filed a section 1983 action against T. D. Hutto, the Director of the Department of Corrections. See 42 U.S.C. § 1983 (1976). In the complaint, Robinson alleges that Hutto was negligent in permitting prison officials to place him with adult inmates. The plaintiff claims that, as a result of Hutto's negligence, he was subjected to a knife wound and a sexual assault. Robinson requests that the court award him damages.

Robinson moves for the joinder of the judge who sentenced him as a party defendant to this action. The court grants this motion. It, nonetheless, still must enter summary judgment for both the old and the new defendant.

A state judge has absolute immunity from civil liability under section 1983. He does not lose this immunity "because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the 'clear absence of all jurisdiction.'" See Stump v. Sparkman, 435 U.S. 349, 356-57 (1978). The judge who sentenced Robinson certainly did not act in the "clear absence of all jurisdiction." He, therefore, is immune from liability for the error in his commitment order.

Hutto also is immune from liability. He simply followed the order of the juvenile court. Hutto clearly receives immunity for the consequences of this action. See

Lockhart v. Hoenstine, 411 F.2d 455, 460 (3d Cir.); cert. denied, 396 U.S. 941 (1969). See also Procunier v. Navarette, 434 U.S. 555 (1978). Thus, the court must enter summary judgment for both defendants.

UNITED STATES DISTRICT JUDGE

DATE: _____