

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

Richmond Division

CLIFFORD N. HOCKADAY,)
)
 Plaintiff,)
)
 v.) CIVIL ACTION NO. 81-0871-R
)
 ANDREW J. WINSTON, Sheriff,)
)
 Defendant.)

MEMORANDUM OPINION

This matter comes before the court on the defendant's motion under Rule 12(b)(6) to dismiss for failure to state a cognizable section 1983 claim. See Fed. R. Civ. P. 12(b)(6). For the reasons stated below, the court conditionally grants this motion.

Clifford N. Hockaday is a prisoner at the Richmond City Jail. On September 30, 1981, Hockaday filed a section 1983 action against Andrew J. Winston, the sheriff in charge of the jail. Hockaday's complaint essentially alleges that jail officials intentionally denied him medical treatment for a fractured nose. The plaintiff asserts that this denial occurred between July 1, 1981, and July 18, 1981.

Hockaday has not claimed that Winston was responsible for or participated in the denial of medical treatment. The courts consistently have held that the respondeat superior doctrine cannot serve as a basis for liability under section 1983. See Davis v. Zahradnick, 600 F.2d 458, 459 n.1 (4th Cir. 1979); Vinnedge v. Gibbs, 550 F.2d 926, 928 (4th Cir. 1977); Harris v. Chanclor, 537 F.2d 203, 206 (5th Cir. 1976); Bennett v. Gravelle, 323 F. Supp. 203, 214 (D. Md.), aff'd, 451 F.2d 1011 (4th Cir. 1971), cert. dismissed, 407 U.S. 917 (1972). See also Rizzo v. Goode, 423 U.S. 362 (1976); Monroe v. Pape, 365 U.S. 167, 187 (1961). In order to prevail against the sheriff, Hockaday must show, at a minimum, that the sheriff was negligent in supervising the prison personnel responsible for Hockaday's medical treatment. See Davis v. Zahradnick,

600 F.2d 458, 459 n.1 (4th Cir. 1979). See generally
Parratt v. Taylor, _____ U.S. _____, 101 S. Ct. 1908, 1910-13
(May 18, 1981). Because Hockaday has failed to allege facts
that would indicate any negligence or participation by
Winston, the court conditionally grants the motion to
dismiss. The court, however, will give the plaintiff ten
days to file an amended complaint that does state a cognizable
claim against Winston or other jail officials. If Hockaday
fails to do so, the court will enter final judgment for
the defendant.

United States District Judge

Date: _____