

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

Richmond Division

AL-MUSTAFA IRSHAD,)
)
 Plaintiff,)
)
 v.) CIVIL ACTION NO. 81-0351-R
)
 GENE JOHNSON, Warden,)
)
 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 under 42 U.S.C. § 1983 (1976). See Fed. R. Civ. P. 12(b)(6). The defendant also has moved for summary judgment under Rule 56(b). See *id.* 56(b). On July 1, 1981, after receiving these motions, the court gave the plaintiff ten days in which to file an amended complaint stating a valid section 1983 claim. The plaintiff failed to file an amendment. For the reasons stated below, the court grants the defendant's motion to dismiss under Rule 12(b)(6).

On November 30, 1980, Al-Mustafa Irshad, a state prisoner incarcerated at the Powhatan Correctional Center (Powhatan), participated in a fight with another inmate. On December 30, 1980, Irshad appeared before the prison's Institutional Adjustment Committee for a hearing on the assault charge arising out of this fight. The committee found him guilty of the offense. It set his penalty at fifteen days of isolation and a forfeiture of thirty days of good-conduct time. A short time later, the prison's Institutional Classification Committee recommended that Irshad be transferred to another institution. As of the filing of this suit, he had not been moved to another facility, because of a delay by the Central Classification Board in granting approval of the transfer.

On April 16, 1981, Irshad brought a section 1983 action against Gene Johnson, the warden of Powhatan. His

complaint, in substance, made three allegations: first, that the Institutional Adjustment Committee denied him due process by wrongfully finding him guilty of an institutional charge; second, that prison officials placed him under investigative hold in maximum security to harass and humiliate him; and, third, that he has not received verification from the Central Classification Board of his transfer to another institution.

The court dismisses these allegations for failure to state a cognizable claim under section 1983. Section 1983 requires that the plaintiff allege a deprivation under color of state law of his constitutional or other federal rights. See Monroe v. Pape, 365 U.S. 167, 170-71 (1961). Irshad has not done so in his complaint.

Irshad first alleges that the Institutional Adjustment Committee denied him "due process." He, however, does not claim that the committee failed to grant him the procedural rights guaranteed by Wolff v. McDonnell, 418 U.S. 539, 556-72 (1974). Irshad, instead, simply contends that the committee denied him a "fair and impartial hearing." He does not indicate in what respect the hearing was impartial. In the absence of a more specific allegation, the court refuses to interfere with the findings of the prison committee. See generally Flythe v. Davis, 407 F. Supp. 137 (E.D. Va. 1976).

Irshad next contends that placing him under investigative hold in maximum security violated his constitutional rights. Prison officials, however, "have a duty to protect inmates from continued exposure to the likelihood of attacks from fellow inmates." McLaughlin v. Royster, 346 F. Supp. 297, 312 (E.D. Va. 1972). The officials at Powhatan, therefore, did not act unreasonably in placing Irshad in maximum security after his actions in the fight on November 30. In addition, the court must give prison officials wide latitude in determining what security measures are appropriate with respect to each prisoner. See Lovern v. Cox, 374 F. Supp. 32, 35 (W.D. Va. 1974). Thus, the court rules that the investiga-

tive hold allegation also fails to state a valid claim.

Finally, Irshad argues that the state's failure to transfer him from Powhatan to another institution violates his federal rights. The Supreme Court, however, has held that the transfer of inmates within a state correctional system is an administrative decision that the federal courts should not review except under extraordinary circumstances. See Meachum v. Fano, 427 U.S. 215, 228-29 (1976). See also Peterson v. Davis, 421 F. Supp. 1220, 1223 (E.D. Va. 1976), aff'd, 562 F.2d 48 (4th Cir. 1977). Irshad has failed to allege any extraordinary circumstances. The court, therefore, also grants the defendant's Rule 12(b)(6) motion with respect to Irshad's third allegation.

United States District Judge

Date: _____

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

Richmond Division

AL-MUSTAFA IRSHAD,)
)
 Plaintiff,)
)
 v.) CIVIL ACTION NO. 81-0352-A^R
)
 GENE JOHNSON, Warden,)
)
 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 under 42 U.S.C. § 1983 (1976). See Fed. R. Civ. P. 12(b)(6). The defendant also has moved for summary judgment under Rule 56(b). See *id.* 56(b). On June 18, 1981, after receiving these motions, the court ordered the plaintiff to file an amended complaint stating a valid section 1983 claim within ten days. The plaintiff filed an amended pleading on June 30, 1981. For the reasons stated below, the court grants the defendant's Rule 12(b)(6) motion to dismiss the complaint. The court, however, in the interest of giving the plaintiff every reasonable opportunity to present any valid claims that he might have, grants the plaintiff leave to file another amended complaint within ten days.

On December 22, 1980, Al-Mustafa Irshad, a state prisoner incarcerated in the Powhatan Correctional Center (Powhatan), underwent surgery to repair the flexion tendon in his right ring finger. The operating physician, Dr. M. Cabiling, placed a cast on his hand at that time. Irshad returned to Powhatan two days after the operation.

On the morning of December 28, 1980, Irshad awoke with a pain in his right hand and blood running from under his cast. He began making a loud noise to attract prison officials. Other inmates joined in. Correctional Officer W. B. Austin approached Irshad's cell and told him to be quiet.

Irshad then informed Austin of his problem and asked to see the prison nurse. Austin told Irshad that the nurse was detained elsewhere in the prison. The officer then left the area of Irshad's cell. Irshad continued to make noise, as did the other inmates in his cellblock. Austin returned and took Irshad to an isolation cell. It is unclear whether the nurse ever saw the prisoner that day. On December 30, 1980, Dr. Cabiling examined Irshad.

On January 6, 1981, Irshad appeared before the prison's Institutional Adjustment Committee for a hearing on the charge of "Participation in or encouraging others in unauthorized group demonstrations." The committee found him guilty of the offense based on the events of December 28. It set his penalty at fifteen days in isolation. Irshad alleges that he also lost thirty days of good-conduct time as a result of the incident.

On April 16, 1981, Irshad brought this section 1983 action against Gene Johnson, the warden of Powhatan. His amended complaint, in substance, makes four allegations: first, that Officer Austin deliberately denied him needed medical treatment for his hand on December 28, 1980; second, that his cell was too cold on December 28, 1980; third, that the Institutional Adjustment Committee denied him due process by wrongfully finding him guilty of an institutional violation; and, fourth, that the committee denied him due process by taking away thirty days of his good-conduct time. None of these allegations are sufficient to state a cognizable section 1983 claim against Johnson.

Irshad first alleges that Austin deliberately denied him needed medical treatment. He contends that this denial violated his rights under the eighth amendment. The Supreme Court, however, has held that the standard for an eighth amendment violation is "deliberate indifference to serious medical needs." Estelle v. Gamble, 429 U.S. 97, 104 (1976). Irshad has failed to allege facts that indicate that his medical needs were "serious." In particular, he has not

stated what injury Austin's denial of medical care has caused him. Irshad also has not indicated for what period of time Austin refused him treatment. Dr. Cabiling's records show that he saw the plaintiff two days after the alleged denial. The denial must be for an unreasonable period of time before it rises to the level of "indifference." Thus, in his amended complaint, Irshad should state specific facts demonstrating that prison officials refused him needed medical treatment for an unreasonable period of time and that this denial resulted in an injury to him.

Another problem with Irshad's first allegation is that it does not indicate any negligence on the part of Warden Johnson in supervising Austin. Austin himself is not a party to the suit. Therefore, in order for Irshad to state a valid section 1983 claim against Johnson, he must allege at least negligent supervision. See Davis v. Zahradnick, 600 F.2d 458, 459 n.1 (4th Cir. 1979); Vinnedge v. Gibbs, 550 F.2d 926 (4th Cir. 1976).

Irshad's second allegation is that his cell was too cold. A pattern of inadequate heating may rise to the level of an eighth amendment violation. See Kirby v. Blackledge, 530 F.2d 583, 587 (4th Cir. 1976). Irshad, however, merely states that his cell was too cold on one particular day. That allegation alone does not create a constitutional claim.

The plaintiff next claims that the Institutional Adjustment Committee denied him due process. This contention fails to state a valid section 1983 cause of action, because it does not allege that the committee denied him any of the procedural rights guaranteed by Wolff v. McDonnell, 418 U.S. 539, 556-72 (1974). In addition, Irshad has failed to state any specific facts demonstrating that the committee did not give him an impartial hearing. Thus, his third contention does not pass muster. See also Irshad v. Johnson, No. 81-0351-R (September 28, 1981) (unpublished).

Irshad's final allegation is that the committee took

away thirty days of his good-conduct time. If the committee assessed this penalty without giving him a hearing complying with the requirements of Wolff v. McDonnell, he may have a valid section 1983 claim. In any amended complaint that Irshad files, he should state specifically the facts surrounding the removal of his good-conduct credits.

Irshad has ten days within which to file another amended complaint stating specific facts that support his section 1983 claims. If he fails to file such an amendment, the court will have no choice but to dismiss his suit with prejudice.

United States District Judge

Date: _____

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

Richmond Division

AL-MUSTAFA IRSHAD,)
)
 Plaintiff,)
)
 v.) Civil Action No. 81-0456-R
)
 GENE JOHNSON,)
)
 Defendant.)

M E M O R A N D U M

The plaintiff is an inmate at the Mecklenburg Correctional Center, which is part of the Virginia prison system. The incident complained of in this action occurred while the plaintiff was incarcerated at the Powhatan Correctional Center. He filed this action under 42 U.S.C. § 1983, claiming that through the negligence of the defendant he lost several items of personal property from his cell. The defendant is the warden of the Powhatan facility. He has filed a motion to dismiss or for summary judgment and the plaintiff has responded to that motion and, thus, the motion is ripe for a decision.

It is apparent from the plaintiff's complaint and his response to the defendant's motion that he is relying on a theory of respondeat superior to impose liability upon the defendant. There is no allegation of negligence on the part of the defendant and from the affidavits filed by the defendant and from the plaintiff's own brief it is apparent that the defendant was not involved in the negligence which is alleged to have caused the loss of the plaintiff's property, assuming, of course, that there was any negligence at all. The doctrine of respondeat superior is inapplicable to suits brought under § 1983. Vinnedge v. Gibbs, 550 F.2d 926 (4th Cir. 1977). See also, Parratt v. Taylor, 49 U.S.L.W. 4509, 4511 n.3 (May 18, 1981); Monell v. New York City Dept. of Soc. Serv., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976).

Therefore, for the reason stated, the defendant's motion is granted. An appropriate order will issue.

Richard L. Williams

United States District Judge

Date: _____

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

Richmond Division

AL-MUSTAFA IRSHAD,)
)
 Plaintiff,)
)
 v.) Civil Action No. 81-0458-R
)
 GENE JOHNSON, et al.,)
)
 Defendants.)

M E M O R A N D U M

The plaintiff is an inmate at the Mecklenburg Correctional Center, which is part of the Virginia prison system. He has brought this complaint under 42 U.S.C. § 1983 claiming the defendants violated his rights by defaming his character by placing him in segregation on investigative hold for charges that turned out to be erroneous. The complaint was filed by leave of court in forma pauperis. The defendants have filed a motion to dismiss or in the alternative for summary judgment. The plaintiff was granted leave to respond to the defendants' motion but chose not to do so. The motion is now ripe for decision. The motion is granted.

The incident the plaintiff complains of occurred while he was imprisoned at the Powhatan Correctional Center. While there, there was allegedly a break-in of another inmate's cell, and, apparently, a fire set in that cell. The plaintiff was thought to have been involved in the incident by prison officials but, according to the affidavit filed by defendant Johnson, the plaintiff was never put on investigative hold because of this incident, nor were any charges placed against him.

The plaintiff was placed on investigative hold by prison officials regarding a completely separate incident involving an assault on another inmate. During the time that the plaintiff was under investigation for the break-in he was

on hold for the assault incident. The uncontroverted evidence before the court is that the only segregation and investigative hold suffered by the plaintiff was for this other incident.

The plaintiff has also asked that the court order that all mention of these charges be expunged from his prison records. A prisoner can bring a suit under § 1983 for the removal of erroneous information in his file, but the Fourth Circuit has tacked a jurisdictional requirement to this type of action that the inmate first apply with prison officials for expungement before seeking relief from the court. Paine v. Baker, 595 F. 2d 197 (4th Cir. 1979). This being jurisdictional, the plaintiff must affirmatively plead that the prison officials have denied him a constitutional right by refusing his request to expunge. The plaintiff having not done so in this case, his claim must be rejected on jurisdictional grounds.

The plaintiff also claims that the investigation defamed him among other inmates and may cause him to be in danger from them. It is not "sufficient to establish a claim under § 1983 and the Fourteenth Amendment that there simply be defamation by a state official. . . ." Paul v. Davis, 424 U.S. 693 (1976). Further the plaintiff has failed to allege that there is a pervasive risk of harm to him, Withers v. Levine, 615 F.2d 158 (4th Cir. 1980) or an egregious failure of prison officials to provide him security. Penn v. Oliver, 351 F. Supp. 1292 (E. D. Va. 1972).

For the reasons stated, therefore, the defendants' motion for summary judgment will be granted.

Richard L. Williams
United States District Judge

Date: _____