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United States District Court, N.D. Indiana, South  
Bend Division.

Kataza TAIFA, et al., Plaintiffs,  
v.  
Evan BAYH, et al., Defendants.

No. 3:92-CV-429AS. | June 6, 1996.

#### Attorneys and Law Firms

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IN, for Evan Bayh, defendant.

#### Opinion

### REPORT AND RECOMMENDATION

PIERCE, United States Magistrate Judge.

\*1 Plaintiff, Roosevelt Williams, is an inmate at the Maximum Control Complex (“MCC”) in Westville, Indiana. On May 6, 1992, Williams, along with a number of other MCC inmates, brought this action under 42 U.S.C. § 1983 against defendants, Governor Evan Bayh, former Department of Correction (“DOC”) Commissioner James E. Aiken, DOC Director of Classification Norman G. Owens, DOC Deputy Commissioner of Operations John Nunn, and Charles E. Wright, former superintendent at the MCC, challenging the assignment of prisoners to, and the conditions of confinement at, the MCC. An amended complaint was filed on May 22, 1992, and on October 2, 1992, Chief Judge Sharp certified this case as a class action solely for “purposes of injunctive relief,” with the class “consisting of all persons who, as of May 4, 1992, and thereafter in the future, are confined or will be confined in the Maximum Control Complex in Westville, Indiana.” The parties’ Agreed Entry and agreement regarding state court claims was approved by the court on February 11, 1994. *Taifa v. Bayh*, 846 F. Supp. 723 (N.D. Ind. 1994), *aff’d sub nom., Isby v. Bayh*, 75 F.3d 1191 (7th Cir. 1996).

A familiarity with the prior proceedings and rulings in this action is presumed. See *Abdul-Wadood v. Wright*,

— F.3d —, No. 95-1349, 1996 WL 218900 (7th Cir. Apr. 30, 1996); *Taifa v. Bayh*, No 3:92CV429AS, 1995 WL 803816 (N.D. Ind. Sep. 26, 1995); *Taifa v. Bayh*, No 3:92CV429AS, 1995 WL 646300 (N.D. Ind. Aug. 22, 1995); *Taifa v. Bayh*, 867 F. Supp. 799 (N.D. Ind. 1994); *Taifa v. Bayh*, No 3:92CV429AS, 1994 WL 821773 (N.D. Ind. Jun. 28, 1994); *Taifa v. Bayh*, 846 F. Supp. 723 (N.D. Ind. 1994), *aff’d sub nom., Isby v. Bayh*, 75 F.3d 1191 (7th Cir. 1996).

Plaintiff Roosevelt Williams’ individual damage claims against the defendants were tried before the undersigned on June 3 and 4, 1996. This Report and Recommendation constitutes the court’s findings of fact and conclusions of law in accordance with Fed.R.Civ.P. 52(a). For the reasons which follow, it will be recommended that judgment be entered in favor of all defendants and against plaintiff Williams on all of his damage claims.

#### *The Testimony and Evidence at Trial*

Williams has been incarcerated at the MCC since October 17, 1991. Generally, Williams and his inmate witnesses<sup>1</sup> testified about the conditions of confinement at the MCC. They testified about extremes in his cell temperature, forced showers with a high pressure water hose, exposure to allegedly toxic chemicals such as tear gas or pepper spray, the use of excessive force, cell extractions, limited access to a law library,<sup>2</sup> poor ventilation, inadequate recreation opportunities, lost or withheld legal mail,<sup>3</sup> non-confidential attorney visits, and clothing.

Much of the evidence presented by Williams generally related to events which occurred after the amended complaint was filed in May, 1992, and, therefore, such evidence was beyond the scope of the amended complaint and was not relevant or material to the issues tried by the court. Williams’ first witness, Kalonji Ra’id Nasihjihad (a.k.a. James Dunville) was not even housed at the MCC until October 26, 1994. Williams testified that during Ramadan<sup>4</sup> in 1996, he was given a vegetarian burger made of soy bean, in his opinion a ground meat product, which his Muslim religion prohibited him from eating.

\*2 Moreover, much of the testimony was presented in the absence of any time frame to establish that the testimony was relevant to Williams’ complaint. For example, John C. Cole, Jr., Richard D. Mumford, III, and Lokmar Abdul-Wadood testified that they witnessed Williams’ bedding being removed; however, they did not indicate the date or dates on which it occurred. Cole and Mumford also testified, without indicating a date or dates, that they witnessed Williams being forcibly showered. Paul Komyatti testified that he saw Williams being forcibly

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showered at the direction of Charles Wright; however, he did not indicate whether it occurred before May, 1992. Edward Broadus testified that he observed guards pull Williams from his cell and take him to the showers, but did not testify as to the date when this occurred.

Further, Williams and his witnesses testified about injuries they attributed to the conditions of confinement at the MCC. Williams testified that the conditions of confinement affected him mentally, psychologically, and physically. He testified that fumes in the MCC's ventilation system caused his migraine headaches, and he testified that diarrhea and stomach problems were caused by the drinking water. He also testified that he was currently taking medications for stomach problems which he believed were related to the water, food, and treatment at the MCC. He testified that he was once bitten by an ant which caused a permanent hearing impairment. Several inmate witnesses, including Aaron Isby, Cole, Komyatti, Mumford, Broadus, and William Sampley attributed their health problems to the allegedly contaminated drinking water at the MCC.

In addition, the bulk of the evidence presented through the inmate witnesses concerned alleged acts and injuries visited upon them rather than Williams. Isby, Cole, Komyatti, Mumford, Broadus, and Sampley testified about the injuries they allegedly sustained from the drinking water. Cole testified that while at the MCC he was denied medical treatment, he inhaled tear gas, and his legal mail was "lost" a few times. Sampley testified that he suffered a heart attack and had problems with the medical staff at the MCC. Such evidence was irrelevant to the issues before the court and did not tend to prove Williams' individual damage claims against the defendants.

Significantly, none of the testimony presented at trial proved any defendant personally responsible for any constitutional injury allegedly sustained by Williams within the relevant time period.

### **Conclusions of Law**

At the close of the plaintiff's case, the defendants moved pursuant to Fed.R.Civ.P. 50 for judgment as a matter of law. It is recommended that judgment be entered in favor of all defendants on Williams' damage claims on four grounds. First, the Eleventh Amendment bars damage claims against the defendants in their official capacities. Second, the defendants are entitled to judgment because no evidence was presented at trial to establish the defendants' personal responsibility for Williams' alleged constitutional deprivations or injuries. Third, the defendants should be granted judgment because the

evidence was legally insufficient to prove causation of Williams' medical injuries. Finally, the newly enacted Prison Litigation Reform Act compels the entry of judgment for the defendants on any claim of mental or emotional injury because no evidence was presented at trial to establish that Williams suffered any physical injury as required by the Prison Litigation Reform Act.

\*3 To the extent that Williams' individual damage claims are brought against the defendants in their official capacities, those claims are barred. The Eleventh Amendment bars suits against a state unless the state consents to suit or Congress abrogates the state's immunity. *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 238 (1985); *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100 (1984) ("[I]n the absence of consent a suit in which the State or one of its agencies or departments is named as the defendant is proscribed by the Eleventh Amendment."); *Alabama v. Pugh*, 438 U.S. 781, 782 (1978); *Moore v. Indiana*, 999 F.3d 1125, 1128 (7th Cir. 1993); *Scott v. O'Grady*, 975 F.2d 366, 369 (7th Cir. 1992), *cert. denied*, 508 U.S. 942 (1993). Because a suit against state officials in their official capacities is the same as a suit against the state itself, *Jackson v. Marion County*, 66 F.3d 151, 152 (7th Cir. 1995); *Wolf-Lillie v. Sonquist*, 699 F.2d 864, 870 (7th Cir. 1983) (citing *Monell v. Dept. of Social Services*, 436 U.S. 658, 690 n.55 (1978)), the Eleventh Amendment bars damage claims against state officials in their official capacities. *Kentucky v. Graham*, 473 U.S. 159, 166 (1985); *Moore*, 999 F.2d at 1128-29; *see also Meadows v. Indiana*, 854 F.2d 1068, 1069 (7th Cir. 1988).

Indiana has not waived its immunity, IND. CODE § 34-4-16.7-3; *see also Meadows*, 854 F.2d at 1069; *Hendrix v. Indiana State Public Defender Sys.*, 581 F. Supp. 31 (N.D. Ind. 1984), and Congress has not abrogated the states' immunity in § 1983 cases. *Quern v. Jordan*, 440 U.S. 332, 342 (1979); *Hutto v. Finney*, 437 U.S. 678, 700 (1978); *Baxter v. Vigo County Sch. Corp.*, 26 F.3d 728, 731 (7th Cir. 1994); *Thomas v. Brown*, 824 F. Supp. 160, 162-63 (N.D. Ind. 1993). Thus, this court lacks subject matter jurisdiction over Williams' individual damage claims against all the defendants. *See Akins v. Bd. of Gov. of State Colleges & Univ.*, 840 F.2d 1371, 1375 (7th Cir.) (referring to Eleventh Amendment as "jurisdictional bar" to official capacity suit for damages), *vacated on other grounds*, 488 U.S. 920 (1988); *Gomez v. Illinois State Bd. of Educ.*, 811 F.2d 1030, 1035 (7th Cir. 1987) (Eleventh Amendment provides "fundamental limitation on federal jurisdiction"). In addition, neither states nor state officials in their official capacities are "persons" within the meaning of § 1983. *Hafer v. Melo*, 502 U.S. 21 (1991); *Will v. Michigan Dep't of State Police*, 491 U.S. at 71 (1989); *Santiago v. Lane*, 894 F.2d 218, 220 n.3 (7th Cir. 1990). Accordingly, it is recommended that any and all damage claims against defendants in their official capacities be dismissed for

lack of jurisdiction over the subject matter.

Defendants are also entitled to judgment in their favor as a matter of law in their individual capacities because the plaintiff presented no evidence suggesting that any of the defendants were personally responsible for any claimed constitutional deprivation. To prevail on a § 1983 claim, the plaintiff must prove a defendant's personal responsibility for the claimed constitutional deprivation. *Moore*, 999 F.2d at 1128; *Jones v. City of Chicago*, 856 F.2d 985, 992 (7th Cir. 1988); *Rascon v. Hardiman*, 803 F.2d 269, 273-4 (7th Cir. 1986); *Duckworth v. Franzen*, 780 F.2d 645, 651 (7th Cir. 1985), *cert. denied*, 479 U.S. 816 (1986). "[A]n individual cannot be held liable in a § 1983 action unless he caused or participated in the alleged constitutional deprivation." *Wolf-Lillie v. Sonquist*, 699 F.2d at 869 (emphasis in original); *Rascon*, 803 F.2d at 273-4. A "causal connection, or an affirmative link" must exist between the deprivation and the defendant's conduct. *Wolf-Lillie*, 699 F.2d at 869; *Rascon*, 803 F.2d at 273. An official cannot be held liable under § 1983 merely because his subordinates violated a plaintiff's constitutional rights. *Polk County v. Dodson*, 454 U.S. 312, 325 (1981) (no claim under § 1983 on a theory of respondeat superior); *Monell v. Dept. of Social Services*, 436 U.S. 658, 694 (1978). No evidence presented at trial proved, or would tend to prove, that any of the defendants had any personal responsibility for any of the alleged constitutional deprivations giving rise to Williams' alleged damages which are the subject of the amended complaint. Therefore, it is recommended that judgment be entered in favor of all defendants on Williams' individual damage claims.

\*4 Further, the absence of medical expert testimony in support of Williams' damage claims warrants the entry of judgment in favor of the defendants. Williams' evidence of causation with respect to his damages consisted of his own testimony and that of other inmates regarding the physical, psychological, and mental injuries they attributed to the conditions of confinement at the MCC. There is absolutely no evidence to show that Williams or any other inmate was qualified to testify as to his medical or psychological condition. See *Walker v. Shansky*, 28 F.3d 666, 672 (7th Cir. 1994) (citing Fed.R.Civ.P. 56(e)).

#### Footnotes

- 1 Kalonji Ra'id Nasihjihad (a.k.a. James Dunville), Aaron Isby, John C. Cole, Jr., Paul Komyatti, Richard D. Mumford, III, Edward Broadus, William Sampley, and Lokmar Abdul-Wadood testified on behalf of Williams. Nathaniel Jones-Bey, although called as a witness, refused to testify at trial.
- 2 Williams testified that from October 1991 through May 1992, he sought but was denied legal assistance from the law library paralegal, but he could not specifically identify the legal authority he was attempting to obtain.
- 3 Williams testified that from October 1991 through May 1992, some of his legal mail was "missing," but he could not specifically identify what mail was missing or when it was missing.

Indeed, because the medical and psychological effects of drinking contaminated water and breathing fumes such as pepper spray would not appear to be within an ordinary person's knowledge, the inmates' lay testimony is insufficient without more to establish the medical causation needed to support Williams' damage claims. See, e.g., *Goffman v. Gross*, 59 F.3d 668, 672 (7th Cir. 1995).

Lastly, the defendants are entitled to judgment under the Prison Litigation Reform Act of 1995, Public Law No. 104-134, 110 Stat. 1321, which provides in pertinent part that "[n]o Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury." No legally sufficient evidence was presented at trial to establish that Williams suffered any *physical* injury for which the defendants were responsible. Therefore, assuming that Williams suffered mental or emotional injuries while at the MCC for which the defendants were personally responsible, he cannot recover any damages for those injuries from the defendants.

#### Conclusion

For the foregoing reasons, it is recommended that final judgment be entered in favor of all the defendants and against plaintiff Roosevelt Williams on all of the plaintiff's individual damage claims and that the plaintiff bear all costs.

ANY OBJECTIONS to this report and recommendation must be filed with the Clerk of courts within ten (10) days of receipt of this notice. Failure to file objections within the specified time waives the right to appeal the district court's order. See *Thomas v. Arn*, 474 U.S. 140, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985); *Lockert v. Faulkner*, 843 F.2d 1015 (7th Cir. 1988); *Video Views, Inc. v. Studio 21 Ltd.*, 797 F.2d 538 (7th Cir. 1986).

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4 A month of fasting for Muslims.