

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

TIMOTHY JOHNSTON,)	
)	
Plaintiff,)	
)	
v.)	Cause No. 4:04CV1075 DJS
)	
LARRY CRAWFORD, et al.,)	
)	
Defendants.)	

DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT

Defendants Crawford, Roper, and Purkett by and through counsel, and submit the following as their answer to plaintiff's Complaint.

I. Nature of Action

1. Defendants admit that this Court has jurisdiction over cases filed under 42 U.S.C. § 1983, and that plaintiff has brought claims under this statute seeking equitable and injunctive relief but deny that plaintiff has stated a claim thereunder.

2. This paragraph contains allegations that assume disputed facts and assume the ultimate allegation and, therefore, defendants deny.

3. Defendants deny.

4. Defendants admit that plaintiff seeks the relief specified in paragraph 4 but deny that plaintiff is entitled to any of the relief he seeks in the Complaint.

II. Plaintiff

5. Defendants admit that plaintiff is an offender in the custody of the Missouri Department of Corrections and is confined at the Potosi Correctional Center in Mineral Point, Missouri 63660 and that plaintiff has been referred to as CP-91 but assert that the address for Potosi Correctional Center is 11593 State Highway O and assert that plaintiff's Register Number is 990091.

III. Defendants

6. Defendant admits that Larry Crawford¹ is the Director of the Missouri Department of Corrections, a department of the State of Missouri and that plaintiff states he is suing Crawford in his individual and official capacity for the purpose of obtaining declaratory and injunctive relief. The remaining allegations in paragraph 6 assume disputed facts and assume legal conclusions and therefore, defendant deny the remaining allegations of paragraph 6.

7. Defendants admit that Donald P. Roper is the Superintendent of the Potosi Correctional Center located in Mineral Point, Missouri and that plaintiff claims that he is suing Roper in his individual and official capacity for the purpose of obtaining declaratory and injunctive relief. Defendants admit that executions have been carried out

¹The Complaint names Gary Kempker as a defendant. By order of this Court, the current Director of the Missouri Department of Corrections, Larry Crawford, is substituted in place of former director Gary Kempker as a party-defendant. (Docket No. 33).

at Potosi Correctional Center. The remaining allegations in paragraph 7 assume factual and legal conclusions and therefore, defendants deny the remaining allegations of paragraph 7.

8. Defendants admit that James Purkett is the Superintendent of the Eastern Reception Diagnostic and Correctional Center located in Bonne Terre, Missouri and that plaintiff claims that he is suing Purkett in his individual and official capacity for the purpose of obtaining declaratory and injunctive relief. Defendants admit that executions have been carried out at Eastern Reception Diagnostic and Correctional Center. The remaining allegations in paragraph 8 assume factual and legal conclusions and therefore, defendants deny the remaining allegations of paragraph 8.

9. Defendants make no response to paragraph 9 because it is directed to other defendants and not to them.

10. Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 10 of plaintiff's Complaint, and therefore, each and every allegation contained in paragraph 10 is denied.

11. Defendants admit that plaintiff states he is bringing this action under the Eighth Amendment to the United States Constitution as applied to the states by the Fourteenth Amendment to the United States Constitution but assert that plaintiff has not stated a claim thereunder.

12. Defendants admit that plaintiff seeks to invoke this Court's jurisdiction

pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1343(a)(3), 28 U.S.C. § 1343(a)(4), 42 U.S.C. § 1983, 28 U.S.C. § 2201(a) and 28 U.S.C. § 1391(b)(2) but deny that plaintiff has stated a claim upon which relief may be granted and therefore, deny that this Court has jurisdiction.

13. Defendants admit that Mineral Point, Missouri is within the venue of the Eastern Division of the Eastern District of Missouri under 28 U.S.C. § 1391(b)(2) but deny that acts or omissions have been committed that would provide a basis for venue.

V. Facts

14. Defendants admit that plaintiff was convicted of capital murder and sentenced to death and admit that plaintiff is awaiting the Missouri Supreme Court to set a date for his execution and that his execution would be by means of lethal injection. Defendants assert that Missouri law vests the authority to supervise and direct executions in the Director of the Department of Corrections. The remaining allegations in paragraph 14 assume factual and legal conclusions and therefore, defendants deny the remaining allegations of paragraph 14.

15. Defendants admit that since 1989, the three drugs used for lethal injection in Missouri are sodium pentathal, pancuronium bromide (pavulon), and potassium chloride. The remaining allegations in paragraph 14 and footnote 1 assume factual and legal conclusions and therefore, defendants deny the remaining allegations of paragraph 14.

16. Defendants deny.

17. This paragraph contain allegations that ssume disputed facts and assume the ultimate allegations, Therefore, defendants deny.

18. This paragraph contain allegations that assume disputed facts and assume the ultimate allegations, and therefore, defendants deny.

19. This paragraph and footnotes 2 and 3 contain allegations that assume disputed facts and assume ultimate allegations and therefore, defendants deny.

20. This paragraph contains allegations that assume disputed facts and assume the ultimate allegations and therefore, defendants deny.

21. Defendants deny.

22. Defendants deny.

VI. Claim

23. For their answer to paragraph 23, defendants hereby adopt and incorporate their answers to paragraphs 1 though 22 here and for their answer to paragraph 23.

24. Defendants deny.

VII. Prayer for Relief

25. Defendants deny that plaintiff is entitled to any relief under his Complaint.

26. Defendants deny that plaintiff is entitled to any relief under his Complaint.

27. Defendants deny that plaintiff is entitled to any relief under his Complaint.

Defendants deny each and every other allegations contained in plaintiff's Complaint not specifically admitted or addressed in this answer. Defendants deny that plaintiff is entitled to any relief sought in his Complaint.

By way of further answer and affirmative defenses, defendants state as follows:

FIRST AFFIRMATIVE DEFENSE

Plaintiff fails to state a claim upon which relief can be granted. Therefore, this complaint should be dismissed pursuant to Fed.R.Civ.P. 12(b)(6).

SECOND AFFIRMATIVE DEFENSE

_____ Plaintiff's claims are barred by Missouri's Statute of Limitations and his complaint should be dismissed.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the Eleventh Amendment and his complaint should be dismissed.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff failed to exhaust his administrative remedies as required by the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a) and therefore his complaint should be dismissed.

FIFTH AFFIRMATIVE DEFENSE

To the extent plaintiff's claims are based on the doctrine of respondeat superior, such claims are barred because the doctrine of respondeat superior is not a basis for recovery under 42 U.S.C. § 1983.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff is unable to meet the legal requirements for the entry of declaratory and injunctive relief and this his Complaint should be dismissed.

SEVENTH AFFIRMATIVE DEFENSE

To the extent plaintiff requests monetary relief, Defendants are protected from liability and suit by Eleventh Amendment immunity and the doctrine of qualified immunity.

EIGHTH AFFIRMATIVE DEFENSE

_____ Defendants Roper and Purkett are not proper parties because they have no authority to decide the method of execution.

NINTH AFFIRMATIVE DEFENSE

_____ Plaintiff is challenging his conviction, sentence, and manner of carrying out that sentence. Therefore, plaintiff must exhaust available state remedies in a federal habeas corpus proceeding prior to pursuing a claim premised under 42 U.S.C. Section 1983.

TENTH AFFIRMATIVE DEFENSE

Defendants reserve the right to amend this answer in order to assert any additional affirmative defenses that may be uncovered or made known during the pendency of this case.

WHEREFORE, defendants Crawford, Roper, and Purkett request this Court dismiss this action with prejudice and assess costs against plaintiff.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing was served in accordance with this Court's electronic filing procedures this 30th day of June, 2005 to:

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