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United States District Court, N.D. California.

Derrick CLARK, et al., Plaintiffs,
v.
STATE OF CALIFORNIA, et al., Defendants.

No. C96–1486 FMS. | May 11, 1998.

Opinion

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION FOR SUMMARY JUDGMENT.

SMITH, J.

INTRODUCTION

***1** Defendants have filed a motion for summary judgment on the grounds that (1) plaintiffs failed to exhaust their administrative remedies as required by 42 U.S.C. § 1997(e); (2) plaintiffs failed to exhaust their state law remedies; (3) plaintiffs have not established equal protection violations; and (4) plaintiffs lack standing to pursue the systematic relief requested in their complaint. Defendants also seek to have the class decertified on the ground that plaintiffs have not demonstrated that the class is so numerous as to make joinder impracticable.

BACKGROUND

Plaintiffs in this class action are inmates under the control of the California Department of Corrections who are developmentally disabled as defined by California Welfare & Institutions Code § 4512(a). Two developmentally disabled prisoners, Derrick Clark and Ambrose Woods, filed an original complaint on behalf of themselves and all others similarly situated on April 22, 1996. They alleged violations of the Americans with Disabilities Act, 42 U.S.C. § 12131–12133, the Rehabilitation Act, 29 U.S.C. § 794, and 42 U.S.C. § 1983.

Defendants filed a motion to dismiss on the grounds that (1) the ADA and the RA did not apply to incarcerated felons, (2) plaintiffs' ADA and RA claims were barred by the Eleventh Amendment, (3) plaintiffs lacked standing to pursue their claims, (4) plaintiffs failed to pursue their state law remedies, and (5) the allegations in the complaint were insufficient to state a claim for any of the causes of action. On October 1, 1996, the Court granted the motion with leave to amend as to plaintiffs' § 1983 due process claims and denied the remainder of the motion. On appeal, the Ninth Circuit denied defendant's petition for permission to appeal the Court's decision as to the applicability of the ADA and RA.[1] Plaintiffs filed a First Amended Complaint on October 31, 1996 in which they added four additional named plaintiffs and amended their due process claims.[2] The court certified the class on February 26, 1997.

[1] Defendants have filed a petition for certiorari in the United States Supreme Court. The Supreme Court is reviewing the applicability of the ADA to incarcerated felons this term in *Pennsylvania Dept. of Corrections v. Yeskey,* USSC Case No. 97–634,cert. granted at 522 U.S. 1086, 118 S.Ct. 876, 139 L.Ed.2d 865, 1998 WL 21894 (January 23, 1998).

[2] The new named plaintiffs in the First Amended Complaint were Larry Dixon, Jr., Milton Silva, Jack Von Gunten, and Mark Mitchell Morino. On March 26, 1998, following the release from CDC custody of Milton Silva and Ambrose Woods, two other inmates, James Simmons and Estella Holloway, were substituted as named plaintiffs.

Plaintiffs have identified six inmates who received disciplinary violations either without having understood the rules they violated or without being provided with staff assistance in defending themselves; six inmates who did not receive staff assistance in classification hearings; three inmates who did not receive assistance in filing administrative appeals; eight inmates subject to physical abuse because of their disabilities; eleven inmates denied adequate medical care because of their disabilities; two inmates denied participation in work programs because of their disabilities; and nine inmates denied participation in educational programs because of their disabilities.[3]

[3] The numbers of inmates identified as having suffered each harm are taken from defendants' moving papers. Although they do intend to dispute them at trial, for

> purposes of this motion, defendants accept plaintiffs' claims of injury as true.

Plaintiffs have also offered evidence that there are at least 1,500 developmentally disabled prisoners scattered throughout the CDC system, and that CDC does not have a systematic method of identifying these inmates in order to provide them with assistance and protection. Many of these inmates are functionally illiterate and therefore unable to understand prison rules and regulations, gain access to medical care, and defend themselves without assistance at disciplinary proceedings. They are frequently excluded from educational and vocational programming and work opportunities available to other prisoners, and are subject to abuse and harassment by other inmates and by correctional staff. The parties have stipulated that the defendants acted under color of state law.

DISCUSSION

I. Legal Standard

***2** To withstand a motion for summary judgment, the opposing party must set forth specific facts showing that there is a genuine issue of material fact in dispute. *See*Fed.R.Civ.P. 56(e). A dispute about a material fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the non-moving party." *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). If the nonmoving party fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial, "the moving party is entitled to a judgment as a matter of law." *Celotex Corp. v. Catrett,* 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986).

In opposing summary judgment, plaintiff is not entitled to rely on the allegations of her complaint. She "must produce at least some 'significant probative evidence tending to support the complaint.' " *T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n,* 809 F.2d 626, 630 (9th Cir.1987) (quoting *First Nat'l Bank v. Cities Serv. Co.,* 391 U.S. 253, 290, 88 S.Ct. 1575, 20 L.Ed.2d 569 (1968)).

The Court does not make credibility determinations with respect to evidence offered, and is required to draw all inferences in the light most favorable to the non-moving party. *See T.W. Elec. Serv., Inc.,* 809 F.2d at 630–31 (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,* 475 U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986)). Summary judgment is therefore not appropriate "where contradictory inferences may reasonably be drawn from undisputed evidentiary facts...."*Hollingsworth Solderless Terminal Co. v. Turley,* 622 F.2d 1324, 1335 (9th Cir.1980).

II. Analysis

A. Exhaustion of Administrative Remedies

In 1996, Congress enacted the Prison Litigation Reform Act (PLRA). The PLRA amended 42 U.S.C. § 1997e(a) to make exhaustion of administrative remedies a jurisdictional predicate for federal actions by prisoners challenging the conditions of their confinement. *See Morgan v. Arizona Dept. of Corrections,* 976 F.Supp. 892 (D.Ariz.1997). Before the passage of the PLRA, prisoners were not required to exhaust administrative remedies in such cases; the previous version of § 1997e allowed district courts to continue cases in order to require exhaustion "if the court believe[d] that such a requirement would be appropriate and in the interests of justice." 42 U.S.C. § 1997e(a)(1); *See Wright v. Morris,* 111 F.3d 414, 415 (6th Cir.1997).

Defendants argue that the current version of § 1997e(a) bars plaintiffs' claims because plaintiffs have not alleged that they have sought or exhausted the administrative remedies available in California; however, the amended § 1997e(a) does not apply to this action. Plaintiffs filed their original complaint on April 22, 1996, four days before the PLRA amendments went into effect. As amended, § 1997e(a) does not have any retroactive effect on cases already filed. *See Wright,* 111 F.3d at 423 (finding the language "no action shall be brought with respect to prison conditions until ... [available] administrative remedies ... are exhausted" to be "explicitly prospective").

***3** Defendants argue that even if the exhaustion requirement does not apply to the claims of the two class representatives named in the original complaint, it does apply to the claims of additional class representatives added in amended complaints filed after April 26, 1996, the day the PLRA went into effect. The Court disagrees. First, the claims raised in plaintiffs' amended complaints relate back to the allegations of the original complaint. *See*Fed.R.Civ.P. 15(c)(2). Second, the class representatives added by amendment were members of the class alleged in the original complaint, so their claims were brought before the PLRA became effective.

B. Exhaustion of State Remedies

A § 1983 claim that would invalidate a conviction or sentence is not cognizable unless the conviction or sentence has been reversed, expunged or called into question by a writ of habeas corpus. *See Heck v. Humphrey,* 512 U.S. 477, 486–87, 114 S.Ct. 2364, 129 L.Ed.2d 383 (1994). When a prisoner challenges the procedures used rather than an actual conviction or sentence, the determination whether his challenge is properly brought under § 1983 must be based on whether "the nature of the challenge to the procedures [is] such as necessarily to imply the invalidity of the [resulting] judgment." *Edwards v. Balisok,* 520 U.S. 641, ——, 117 S.Ct. 1584, 1587, 137 L.Ed.2d 906 (1997).

In *Edwards,* the Supreme Court held that a prisoner's § 1983 claim for damages and declaratory relief for denial of due process in a hearing that led to the loss of good-time credits was barred under *Heck.*The plaintiff in *Edwards* alleged that the hearing officer at the prison was biased and had excluded exculpatory evidence. Because such allegations were of a type that had led to the reinstatement of good-time credits in state and federal courts, the Court held that a victory for the plaintiff would necessarily imply the invalidity of his sentence. *See id.* at 1588–89. The question before this Court then is whether these plaintiffs' due process challenge "necessarily implies" the invalidity of their sentences.

In their § 1983 due process challenge, plaintiffs claim that defendants subject class members to disciplinary, grievance, parole, and administrative proceedings which they lack the ability to participate in meaningfully without assistance, and that defendants disseminate prison rules and regulations in written materials which class members lack the ability to read and understand. As a result, class members are deprived without due process of their liberty interest in good-time credits.

Plaintiffs argue that the Court should focus on whether a plaintiff is seeking prospective relief, relying on the *Edwards* Court's observation that the plaintiff's prayer for prospective relief was not barred by *Heck.See id.* at 1589. Although no court has barred a claim for prospective relief under the *Heck* and *Edwards,* plaintiffs' approach ignores that the focus of the inquiry after *Edwards* is on the nature of the challenge rather than on the type of relief sought. The plaintiff's claim for prospective relief in *Edwards* was based on the prison's failure to date-stamp witness statements, a failure that did not "necessarily imply" the invalidity of a previous loss of good time credits because the failure to date-stamp witness statements would not necessarily lead to the reinstatement of good time credits.

***4** Defendants argue that plaintiffs' allegations that they have been deprived of good time credits as a result of procedural defects bars their claims under *Edwards* and *Gotcher v. Wood,* 122 F.3d 39 (9th Cir.1997), *rev'g*66 F.3d 1097 (9th Cir.1995). Following *Edwards,* the Ninth Circuit reversed its pre-*Edwards* decision in *Gotcher I. Gotcher I* held that a § 1983 claim challenging the procedures used in denying good-time credits rather than the actual denial of credits was cognizable. The plaintiff in *Gotcher* had alleged that the prison failed to give him 24–hour advanced written notice of allegations against him and did not allow him to call witnesses or present documentary evidence in his defense. Without discussion, the panel in *Gotcher II* held that *Edwards* foreclosed the plaintiff's entire compensatory claim. *Id.* at 39.

Because an allegation of wrongful deprivation of good-time credits will always be necessary to establish a due process claim relating to procedures used when good-time credits are at stake, however, defendants' approach appears to be overly broad. In discussing the reach of *Heck v. Humphrey,* the *Edwards* Court reiterated a distinction made in *Heck* between procedural challenges that "necessarily vitiated the denial of good-time credits" and those that did not. *See Edwards,* 520 U.S. at ——, 117 S.Ct. at 1587. As an example of those that did not, the Court referred to the procedures challenged in *Wolff v. McDonnell,* 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974), where prison officials had failed to specify what facts and evidence supported a finding of guilt in a disciplinary hearing. *See id.* at 563–64. In her concurrence in *Edwards,* Justice Ginsburg emphasized that the decision was based on plaintiff's specific allegations of "deceit and bias on the part of the decisionmaker" and that under *Wolff,* a claim based on allegations of other procedural defects could still be cognizable.

The Court finds that plaintiffs' claims are analogous to the type of claims presented in *Wolff.* Like the failure to provide a prisoner with facts and evidence against him, the failure to provide plaintiffs with information and assistance to respond meaningfully to charges against them do not "necessarily vitiate[ ] the denial of good-time credits." The provision of information and assistance plaintiffs seek would not compel the reinstatement of good-time credits formerly lost or guarantee that plaintiffs will not lose good-time credits in the future. Although some plaintiffs might be entitled to a new hearing on certain matters if the Court finds a constitutional violation, this Court's findings will not ensure their success on the merits. The Court concludes, therefore, that plaintiffs' § 1983 due process claims are cognizable.

C. Equal Protection Claims

In order to establish an equal protection claim, plaintiffs must show that defendants have failed to treat them in the same manner as other similarly situated persons. *See City of Cleburne v. Cleburne Living Center,* 473 U.S. 432, 439, 105 S.Ct. 3249, 87 L.Ed.2d 313 (1985). Defendants argue that plaintiffs cannot maintain their equal protection claims because the non-developmentally disabled prisoners whose treatment they compare to their own are not similarly situated. The Court agrees. *See Hansen v. Rimel,* 104 F.3d 189 (8th Cir.1997). In *Hansen,* a hearing-impaired inmate brought an equal protection claim alleging that prison officials' failure to provide him with a special telephone denied him telephone access enjoyed by inmates without hearing impairments. The court dismissed the claim because the plaintiff, who could not use a standard telephone, was not "equally capable for the purpose at issue." *Id.* at 190.

***5** Plaintiffs argue that for the purposes at issue in this action, they are similarly situated to non-disabled inmates but are receiving different treatment. Plaintiffs claim, however, that they are barred from access to medical care because they are unable to understand and complete the written forms that all prisoners are required to use. They also claim that they are unable to participate in the educational programming offered in the prisons because the level of programming offered to all prisoners is too advanced for them. It appears that all of the different treatment plaintiffs claim to be receiving is the result not of defendants' disparate treatment of them but of their own disabilities. It is difficult to understand, therefore, in what way the equal protection clause is implicated.[4]

[4] Although plaintiffs' equal protection claims might be viable under a disparate impact rubric, plaintiffs' counsel emphasized at oral argument that the claims are for disparate treatment rather than disparate impact.

D. Standing

Defendants argue that the Supreme Court's decision in *Lewis v. Casey,* 518 U.S. 343, 116 S.Ct. 2174, 135 L.Ed.2d 606 (1996), requires plaintiffs to demonstrate widespread actual injury to members of the plaintiff class in order to have standing to pursue systemwide relief. As plaintiffs point out, defendants have mistakenly grafted the requirements for obtaining systemwide relief onto the *Lewis* Court's separate discussion of standing.

The plaintiffs in *Lewis* were inmates in the Arizona state prison system. They brought a class action on behalf of all adult present and future prisoners incarcerated by the state of Arizona Department of Corrections (ADOC), alleging that ADOC was depriving them of their right of access to the courts and to counsel under *Bounds v. Smith,* 430 U.S. 817, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977). *Id.* at 2177. After a trial, the district court found that ADOC's system failed to comply with constitutional standards, and that lockdown prisoners and illiterate or non-English-speaking prisoners were particularly affected by the system's inadequacies. Based on the recommendations of a special master, the court entered an injunction mandating sweeping changes in ADOC's prison library and legal assistance practices, and requiring new procedures and services for lockdown prisoners and illiterate or non-English speaking prisoners. *Id.* at 2178. The Supreme Court reviewed the scope of the relief granted and held that because the plaintiffs had failed to demonstrate widespread actual injury, they were not entitled to systemwide relief.

The *Lewis* Court held as a threshold matter that in order to have standing, a plaintiff alleging a *Bounds* violation must demonstrate that he was deprived of the ability to pursue a non-frivolous legal claim, not just that the available legal resources were inadequate in the abstract. *Id.* at 2180–81. Applying this rule, the Court found only two instances of actual injury in the record. *Id.* at 2182. Based on that finding, the Court held that systemwide relief was not warranted. This holding "does not rest upon the application of standing rules." *Id.* at 2184, n. 7. It merely imposes a burden on plaintiffs seeking broad relief to prove that such relief is commensurate with the scope of the harm.[5]

[5] Similarly, *Toussaint v. McCarthy,* 926 F.2d 800 (9th Cir.1987), cited by defendants, only held that there was no basis for an injunction requiring a court-appointed monitor to review a prison's administrative proceedings when only five actual injuries out of 780 potential cases had been identified. Neither *Toussaint* nor *Lewis* imposes a mathematical standing requirement; they merely require plaintiffs seeking broad relief to show widespread harm.

***6** Defendants urge that in order to meet this burden on summary judgment, plaintiffs must prove the breadth of the harm by presenting the Court with specific evidence about the experiences of numerous inmates. Defendants are mistaken. Plaintiffs' burden at this juncture is to raise a genuine issue of fact regarding the existence of widespread injury. They must offer more than their allegations, but there is no requirement that their evidence

be in the form that defendants urge.

Plaintiffs have submitted declarations and depositions from eleven inmates attesting to the injuries alleged in the complaint. They have also submitted the declarations of two experts, Albert S. Duncan, Ph.D. and Craig William Haney, Ph.D., indicating that there are at least 1,500 developmentally disabled prisoners scattered throughout the CDC system, and that CDC does not have a systematic method of identifying these inmates in order to provide them with assistance and protection. Based on observation, review of documents and depositions, and his own interviews with inmates and prison personnel, it is Dr. Duncan's opinion that developmentally disabled inmates in CDC institutions are subject to all of the harms that the named plaintiffs have allegedly suffered. Such evidence is sufficient to demonstrate that there are factual questions in dispute regarding the breadth of the harm to the plaintiff class.[6]

[6] Raising a genuine issue of material fact does not necessarily imply victory at trial. Further, defendants are apparently willing to grant the relief sought. *See* Declaration of William Jenkins, Exhibit C. Both sides are cautioned that continuing to spend taxpayers' funds on unnecessarily protracting this litigation will not be well-received by the Court.

E. Decertification

Defendants argue that the class should be decertified because plaintiffs have failed to meet the numerosity requirement of Rule 23(a). Because plaintiffs have offered evidence that there are at least 1,500 developmentally disabled inmates under the control of the CDC and that the policies and practices causing harm to the named plaintiffs are in place throughout the system, defendants' motion to decertify is DENIED.

CONCLUSION

Defendants' motion for summary judgment is GRANTED as to plaintiffs' § 1983 equal protection claims; these claims are DISMISSED with prejudice. Defendants' motion is DENIED as to exhaustion of administrative remedies, exhaustion of state remedies, and standing. Defendants' motion for decertification is DENIED.

SO ORDERED.

s.