

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ROBERT D. McGRATH,

Plaintiff,

OPINION and ORDER

v.

06-C-343-C

LENARD WELLS and
LAURA MOFFIT,

Defendants.

In this civil action for monetary relief brought under 42 U.S.C. § 1983, plaintiff Robert D. McGrath, a former prisoner at the Oakhill Correctional Institution in Oregon, Wisconsin, contends that his constitutional rights were violated when defendant Lenard Wells singled him out for differential treatment in connection with his consideration for parole and defendant Laura Moffit vindictively altered the date of his offense on his judgment of conviction in order to make him ineligible for nondiscretionary parole release.

Now before the court is defendant Wells's motion to dismiss the claim against him on the ground that he is entitled to absolute immunity for decisions he made as chair of the Wisconsin Parole Commission. Because I find that the acts of which plaintiff complains are

ones defendant Wells took (or failed to take) in his official role as parole chairman, the motion will be granted.

I draw the following facts from the allegations in plaintiff's complaint.

FACTUAL ALLEGATIONS

A. Parties

Plaintiff Robert D. McGrath is an inmate confined at the Oakhill Correctional Institution in Oregon, Wisconsin.

Defendant Lenard Wells is former chair of the Wisconsin Parole Commission.

B. Parole

Both victims of plaintiff's crime visit him often in prison. When considering plaintiff's parole application, defendant Wells and his staff knew where the victims lived and had their home addresses and phone numbers on file. Nevertheless, defendant Wells failed to notify plaintiff's victims or their mothers that plaintiff had applied for parole, or inform them of plaintiff's scheduled parole hearings.

Other inmates and their family members wrote to defendant Wells and received personal responses. When plaintiff and his family, friends and victims wrote to defendant Wells, they received no personal response. Defendant Wells did not respond to phone calls

and letters regarding plaintiff because he did not want to hear that plaintiff's family, friends and victims want him to be released to come home to help his wife. Even when plaintiff wrote defendant Wells to explain that his judgment of conviction had been entered in error, Wells did not respond personally, but merely returned plaintiff's correspondence with an unsigned cover letter. Defendant Wells has "ignored plaintiff in all manners possible."

OPINION

Absolute immunity immunizes government officials from liability and is accorded to public officials only in limited circumstances. Burns v. Reed, 500 U.S. 478, 486-87 (1991). Among the few functions accorded the more encompassing protections of absolute immunity are "truly judicial acts." Forrester v. White, 484 U.S. 219, 226-27 (1988). Absolute judicial immunity "is not limited to government officials with the title of judge; officials performing functionally comparable acts in other contexts, such as administrative agencies, [may] also [be] accorded absolute immunity." Dawson v. Newman, 419 F.3d 656, 662 (7th Cir. 2005). In determining whether government officials are entitled to absolute immunity, courts apply a functional approach, evaluating whether the official's action is functionally comparable to that of judges.

It is well-established that "parole board members are absolutely immune from suit for their decision to grant, deny, or revoke parole." Wilson v. Kelkhoff, 86 F.3d 1438, 1444

(7th Cir. 1996); Walrath v. United States, 35 F.3d 277, 281 (7th Cir. 1994) (collecting cases). Additionally, courts have held that activities that are “inexorably connected with the execution of parole . . . procedures and are analogous to judicial action” invoke absolute immunity. Wilson, 86 F.3d at 1444; Walrath, 35 F.3d at 282. Thus, “not only the actual decision to revoke parole, but also activities that are part and parcel of the decision process” justify absolute immunity. Wilson, 86 F.3d at 1444 (citing Thompson v. Duke, 882 F.2d 1180, 1184 (7th Cir. 1989)).

In this case, plaintiff alleges that defendant Wells violated his right to equal protection by treating him less favorably than other parole eligible inmates. Although equal protection claims are most commonly brought by members of disfavored classes of citizens or by citizens attempting to enforce fundamental rights, courts have recognized that successful equal protection claims can be brought by a “class of one,” when a plaintiff alleges that he “has been intentionally treated differently from others similarly situated without a rational basis for the difference in treatment.” Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000). A “class of one” plaintiff may demonstrate that he has suffered intentional, irrational, and arbitrary treatment “either by showing that he was treated differently from identically situated persons for no rational reason, or that he was treated worse than less deserving individuals for no rational reason.” Bell v. Duperrault, 367 F.3d 703, 707 (7th Cir. 2004).

According to plaintiff, defendant Wells's arbitrarily treated him differently from other parole applicants by failing to respond to correspondence sent by plaintiff and his friends and family members and by failing to notify the victims of his offense that he was being considered for parole. Plaintiff alleges that he and his friends and family wished to contact defendant Wells in order to tell him that "they all wanted [plaintiff] released, including the victims . . . that the plaintiff ha[d] served enough time and that it was time to come home to help his wife." Cpt., dkt. #1, at 2. By plaintiff's own admission, the conduct in which defendant Wells is alleged to have engaged, failing to respond to correspondence and to notify victims, was related intrinsically to Wells's decision to deny plaintiff's parole application.

Absolute immunity shields "not only actual decisions, but also those mundane, even mechanical, tasks . . . related to the judicial [or quasi-judicial] process." Wilson, 86 F.3d at 1445. Defendant Wells's decision to respond or not respond to correspondence relating to plaintiff's parole application was "part and parcel" of the decision to deny plaintiff's parole. Consequently, defendant Wells is entitled to absolute immunity from suit with respect to plaintiff's claims against him in this lawsuit. The motion to dismiss will be granted.

ORDER

IT IS ORDERED that the motion to dismiss of defendant Lenard Wells is

GRANTED. Defendant Wells is DISMISSED from this lawsuit, as are plaintiff's claims against him.

Entered this 28th day of November, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge