IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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JEFFREY M. SCHREIBER,

Plaintiff,

OPINION AND ORDER

03-C-0178-C

v.

COLUMBIA COUNTY SHERIFF STEVE ROWE,

Defendant.

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Plaintiff Jeffrey M. Schreiber, proceeding in forma pauperis pursuant to 28 U.S.C. § 1915, brings this civil action for monetary damages against defendant Columbia County Sheriff Steve Rowe for alleged harm plaintiff suffered while in defendant's custody in the Columbia County jail. Plaintiff claims that defendant violated Article III of the Interstate Agreement on Detainers (IAD), 18 U.S.C. app. 2, § 2, by failing (1) to promptly inform him of the source and contents of a detainer lodged against him by the state of Indiana and of his right to make a request for final disposition of the underlying charges; and (2) to provide him with a pre-extradition hearing when he was moved to Indiana.

Plaintiff seeks relief under 42 U.S.C. § 1983, alleging that defendant's actions caused him (1) to be denied participation in rehabilitative programs including work release; (2) to

be jailed under increased security; (3) to be unable to address the underlying charges in a timely fashion; and (4) to suffer mental anguish and emotional distress.

Jurisdiction exists under 28 U.S.C. § 1331. Because a substantial part of the events or omissions giving rise to the claims occurred in Columbia County, which is located in this district, venue is proper under 28 U.S.C. § 1391(b)(2).

To prevail on a motion for summary judgment, the moving party must show that even when all inferences are drawn in the light most favorable to the non-moving party, there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986); McGann v. Northeast Illinois Regional Commuter Railroad Corp., 8 F.3d 1174, 1178 (7th Cir. 1993). When the moving party succeeds in showing the absence of a genuine issue as to any material fact, the opposing party cannot rest on the pleadings but must set forth specific facts showing that there is a genuine issue for trial. Fed. R. Civ. P. 56(e); Matsushita Electric Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986); Fisher v. Transco Services-Milwaukee, Inc., 979 F.2d 1239, 1242 (7th Cir. 1992). Summary judgment may be awarded against the non-moving party only if the court concludes that a reasonable jury could not find for that party on the basis of the facts before it. Hayden v. La-Z-Boy Chair Co., 9 F.3d 617, 618 (7th Cir. 1993), cert. denied, 114 S. Ct. 1371 (1994).

For the sole purpose of deciding this motion, I find from the parties' proposed

findings of fact that the following facts are material and undisputed.

ALLEGATIONS OF FACT

The parties to this lawsuit are plaintiff Jeffrey M. Schreiber, a former Columbia County jail inmate, and defendant Steve Rowe, Columbia County Sheriff. On August 14, 2001, plaintiff's probation officer told him that his probation was being revoked because of outstanding charges against him in Lake County, Indiana. Plaintiff knew he had been arrested in Indiana for Operating While Intoxicated and Resisting Arrest, both felonies. He assumed that the charges against him were the result of that arrest. Shortly after August 14, plaintiff was booked into the Columbia County jail. He was given a manual regarding jail rules and instruction for using Inmate General Request Forms. At the time plaintiff was booked into the Columbia County jail, defendant Sheriff Rowe did not know about the Indiana charges against plaintiff.

Plaintiff used the Inmate General Request Forms to make numerous requests during his incarceration. On August 17, 2001, plaintiff wrote a letter to the Lake County Superior Court Clerk, asking about the pending charges against him and requesting a disposition of them. Plaintiff attempted without success to give a copy of the letter to one of defendant's subordinates. Defendant never received a copy of the letter.

On August 22, 2001, the Lake County Sheriff's Department faxed a detainer and a

warrant for plaintiff's arrest to the Columbia County jail. Defendant did not personally receive this fax and did not learn that a detainer had been lodged against plaintiff until January 2002.

On August 29, 2001, plaintiff received an order from Lake County Superior Court Judge Richard W. Maroc, in response to a letter plaintiff had written the court on August 17, asking about the status of charges against him in Indiana and requesting disposition of those charges. The order stated that plaintiff should direct his request to the official having custody of him. It also directed the clerk to forward a copy to the warden or superintendent of the Columbia County Jail. Also on August 29, plaintiff asked another of defendant's subordinates how to proceed.

In early September 2001, corrections officer David Duvall called plaintiff to the jail's administrative office and attempted to hand him a copy of Judge Maroc's order. At that time, plaintiff told Sergeant Duvall that he had requested disposition of the charges against him in Indiana, and that the jail now had a copy of his request in writing.

On October 8, 2001, plaintiff submitted an Inmate Request Form, asking whether there were any outstanding warrants for his arrest. The response was "none at this time."

On October 30, 2001, plaintiff met with his attorney, Public Defender David Knaapen, who advised him to address his extradition issues to authorities in Indiana. Knaapen did not advise plaintiff to submit a written request for disposition of his Indiana

detainer to defendant. Plaintiff met with Knaapen again on November 15, 2001, and received the same advice.

On January 5, 2002, plaintiff submitted an Inmate General Request Form, asking to speak with jail administrator Darrel Kuhl regarding extradition under the Agreement on Detainers. The following day, Sergeant Duvall responded by advising plaintiff to discuss the matter with his attorney. On January 10, plaintiff submitted another Inmate General Request Form, asking to speak with Captain Kuhl regarding extradition. Captain Kuhl affirmed Sergeant Duvall's response that plaintiff should contact his attorney. Also, Kuhl stated that jail officials would not contact anyone in Lake County regarding the matter. The same day, plaintiff submitted another request, asking to speak with a lawyer regarding extradition and the detainer. On January 11, 2002, Sergeant Duvall informed plaintiff that a public defender would meet with him the following week.

Defendant learned of plaintiff's detainer issue in January 2002. On January 11, plaintiff wrote to defendant for the first and only time. Although plaintiff specifically referred to three subparagraphs of Wis. Stat. § 976.05, Wisconsin's Interstate Agreement on Detainers statute, he did not ask defendant to take any action regarding the disposition of the charges in Indiana. At no point did plaintiff ever discuss extradition with defendant.

On February 4, 2002, plaintiff met with Captain Kuhl to discuss his extradition rights under the Agreement on Detainers. Captain Kuhl told plaintiff to draft a request for

disposition of the Indiana charges and have it notarized. Plaintiff prepared a letter to Captain Kuhl to that effect. Within two days of receiving plaintiff's written request, Captain Kuhl mailed it to the Chief Prosecuting Attorney for Lake County, Indiana, together with a letter stating that plaintiff had made a written demand for disposition of the charges pending against him in Indiana, and an Inmate Sentence Data certificate, providing the other information required under the Agreement on Detainers.

On April 17, 2002, plaintiff was extradited to Indiana without a pre-extradition hearing.

OPINION

A. The Interstate Agreement on Detainers

The Interstate Agreement on Detainers is a compact among 48 states, including Wisconsin, and the federal government. Carchman v. Nash, 473 U.S. 716, 719 (1985); Wis. Stat. §§ 976.05 and 976.06. Under the agreement, when a state has pending charges against an individual who is already incarcerated in another state, the state with pending charges ("the receiving state") may file a request with the state where the accused is presently incarcerated ("the sending state") to hold the accused for the receiving state or to notify it when the accused's release is imminent. New York v. Hill, 528 U.S. 110, 111 (2000). Such a request is called a detainer. Once a detainer has been filed, the agreement requires the

accused's present custodian to "promptly inform the prisoner of the source and contents of any detainer lodged against the prisoner" and to "inform the prisoner of the prisoner's right to make a request for final disposition of the indictment, information or complaint on which the detainer is based." 18 U.S.C. app. 2, § 2, art. III(c). Once notice has been given, the prisoner may demand a trial on the charges identified in the detainer. 18 U.S.C. app. 2, § 2, art. III(a). If a receiving state chooses to accept custody, it has 180 days to bring the prisoner to trial. Id. The agreement recognizes the view of Congress and the party states that detainers "produce uncertainties which obstruct programs of prisoner treatment and rehabilitation," 18 U.S.C. app. 2, § 2, art. I, and that an "inmate who has a detainer against him is filled with anxiety and apprehension," Carchman, 473 U.S. at 720. Thus, the purpose of the agreement is "to encourage the expeditious and orderly disposition of [outstanding] charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints." 18 U.S.C. app. 2, § 2, art I.

Because the agreement is sanctioned by Congress, its application and enforcement present federal questions of law. Carchman, 473 U.S. at 719; see also Reed, 512 U.S. at 347 (holding that violations of Interstate Agreement on Detainers are cognizable under 28 U.S.C. § 2254 in some circumstances). Further, in Cuyler v. Adams, 449 U.S. 433 (1981), the Court recognized that a violation of the agreement could form the basis of a cause of action under 42 U.S.C. § 1983, which imposes liability on persons who, under color of state

law, deprive others of rights "secured by the Constitution and laws" of the United States. See also Cross v. Cunningham, 87 F.3d 586 (1st Cir. 1996) (stating that provisions of Interstate Agreement on Detainers may be enforced under § 1983). Since 1981, the Supreme Court has narrowed the availability of § 1983 as a remedy for non-constitutional violations. See, e.g., Gonzaga University v. Doe, 536 U.S. 273 (2002) (students may not bring claim under § 1983 for violations of the Family Educational Rights and Privacy Act). However, the Court has not revisited the holding in Cuyler or suggested that it was decided wrongly. Accordingly, I conclude that Cuyler is still controlling. See Rodriguez de Quijas v. Shearson/American Express, Inc., 490 U.S. 477, 484 (1989) ("If a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, [lower courts] should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions.").

B. Personal Involvement

It is well established that liability under § 1983 must be based on a defendant's personal involvement in the underlying misconduct. See Gentry v. Duckworth, 65 F.3d 555, 561 (7th Cir. 1995); Del Raine v. Williford, 32 F.3d 1024, 1047 (7th Cir. 1994); Morales v. Cadena, 825 F.2d 1095, 1101 (7th Cir. 1987); Wolf-Lillie v. Sonquist, 699 F.2d 864, 869 (7th Cir. 1983). "A causal connection, or an affirmative link, between the misconduct

complained of and the official sued is necessary." Wolf-Lillie, 699 F.2d at 869. "Section 1983 creates a cause of action based on personal liability and predicated upon fault; thus, liability does not attach unless the individual defendant caused or participated in a constitutional deprivation." Vance v. Peters, 97 F.3d 987, 991 (7th Cir. 1996).

The facts do not support an inference of any direct participation by defendant in depriving plaintiff of rights secured by the Agreement on Detainers. However, direct participation is not the only means by which defendant could be held liable. Liability may also be found where the official "acts or fails to act with a deliberate or reckless disregard of plaintiff's constitutional rights, or if the conduct causing the constitutional deprivation occurs at her direction or with her knowledge and consent." Smith v. Rowe, 76l F.2d 360, 369 (7th Cir. l985). See also McPhaul v. Board of Commissioners of Madison County, 226 F.3d 558, 566 (7th Cir. 2000); Sanville v. McCaughtry, 266 F.3d 724, 739-40 (7th Cir. 2001); Kitzman-Kelley ex rel. Kitzman-Kelley v. Warner, 203 F.3d 454, 459 (7th Cir. 2000) (individual may be liable personally for failure to train). Because I find no direct participation by defendant, I will also consider the other means by which defendant might be held responsible for the alleged wrongdoing.

C. Respondeat Superior

The alleged blunders and misdeeds by several of defendant's subordinates raise the

question whether defendant might be held liable under the doctrine of respondeat superior. However, no such cause of action exists under § 1983. See Kitzman-Kelley, 203 F.3d at 458 (no respondeat superior liability in § 1983 context). In Lanigan v. Village of East Hazel Crest, Ill., 110 F.3d 467 (7th Cir. 1997), the court articulated the legal standard for holding a government official responsible under § 1983 for the acts or omissions of a subordinate. The supervisor must have known of the subordinate's conduct and approved of the conduct and the basis for it. Id. at 477. "[T]o be liable for the conduct of subordinates, a supervisor must be personally involved in that conduct." Jones v. City of Chicago, 856 F.2d 985, 992 (7th Cir. 1988) (citations omitted). "[S]upervisors who are merely negligent in failing to detect and prevent subordinates' misconduct are not liable, because negligence is no longer culpable under § 1983." Jones, 856 F.2d at 992. "[G]ross negligence is also not enough to impose supervisory liability." Id. "[S]upervisors must know about the conduct and facilitate it, approve it, condone it, or turn a blind eye for fear of what they might see. They must in other words act either knowingly or with deliberate, reckless indifference." Id. at 992-93.

Therefore, although Article III(c) of the Agreement on Detainers imposes a general duty on defendant regarding detainers, a plaintiff cannot base a § 1983 claim on the acts or omissions of his subordinates preventing him from carrying out that duty. Plaintiff has failed to make any showing that defendant knew of his detainer before January 2002. Plaintiff did not make a proper request for disposition of the detainer until February 4,

2002. Defendant's subordinate processed and mailed the necessary paperwork to Indiana two days later. Any prior mishandling of the detainer by a subordinate is not actionable against defendant on a respondeat superior theory under § 1983.

D. Failure to Train

To find a municipality liable under § 1983 for failure to train its law enforcement officers properly, there must have been "deliberate indifference" toward the rights of individuals with whom officers came into contact. City of Canton, Ohio v. Harris, 489 U.S. 378, 388 (1989). Further, the Supreme Court has required that plaintiff identify a "policy" or "custom" that caused his injury. Board of the County Commissioners v. Brown, 520 U.S. 397, 403 (1997) (citing Monell v. New York City Dept. of Social Services, 436 U.S. 658, 694 (1978); Pembaur v. Cincinnati, 475 U.S. 469, 480-81 (1986); City of Canton, 489 U.S. at 389). "Only where a failure to train reflects a 'deliberate' or 'conscious' choice by a municipality—a 'policy' as defined by our prior cases—can a city be liable for such a failure under § 1983." City of Canton, 489 U.S. at 389.

Plaintiff alleges failure to train by defendant, who is an individual rather than a municipality. The Seventh Circuit has recognized that the same deliberate indifference standard also applies in cases alleging failure to train by an individual supervisor. Kitzman-Kelley, 203 F.3d at 458 (citing Gossmeyer v. McDonald, 128 F.3d 481, 495 (7th Cir.

1997)) (plaintiff must allege that defendants themselves acted with deliberate indifference). Because plaintiff has made no showing at all as to defendant's policies or customs regarding detainers, I cannot find defendant liable for any alleged failure to properly train his subordinates.

E. Qualified Immunity

As an affirmative defense, defendant alleges that even if he were responsible for a violation of plaintiff's rights under the Agreement on Detainers, he is entitled to qualified immunity. In Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982), the Supreme Court held that public officials are entitled to immunity from liability for civil damages unless their conduct violates "clearly established statutory or constitutional rights of which a reasonable person would have known." See Rakovich v. Wade, 850 F.2d 1180 (7th Cir. 1988)(en banc), cert. denied, 488 U.S. 968 (1988); Greenberg v. Kmetko, 840 F.2d 467, 472 (7th Cir. 1988). Qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law." Malley v. Briggs, 475 U.S. 335, 341 (1986).

I need not decide whether the defendant in this case is protected by qualified immunity, because he has not been found liable for a constitutional or statutory violation. Kraushaar v. Flanigan, 45 F.3d 1040, 1049 n. 4 (7th Cir. 1995) (citing Cornfield v. Consolidated High School District No. 230, 991 F.2d 1316, 1328 (7th Cir. 1993) (Easterbrook, J., concurring)).

F. Extradition without a Hearing

Finally, plaintiff's claim that he was improperly extradited to Indiana without a hearing has no legal merit. Article III(e) of the Agreement on Detainers clearly states that "[a]ny request for final disposition made by a prisoner pursuant to [Article III](a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding . . . and a waiver of extradition to the receiving State[.] The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement[.]" By requesting disposition, plaintiff consented to being extradited to Indiana.

ORDER

IT IS ORDERED that

Defendant Columbia County Sheriff Steve Rowe's motion for summary judgment is GRANTED. Plaintiff Jeffrey M. Schreiber's case is DISMISSED. The clerk is directed to

enter judgment in favor of defendant and close this case.

Entered this 23rd day of April, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge