IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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JEFFREY M. SCHREIBER,

Plaintiff,

v.

Columbia County Sheriff STEVE ROWE,

Defendant.

ORDER

03-C-0178-C

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In an opinion and order dated April 23, 2004, I granted defendant Steve Rowe's motion for summary judgment on plaintiff Jeffrey Schreiber's claims that defendant Rowe violated his rights under the Interstate Agreement on Detainers by failing to give him both proper notice of a detainer lodged against him in Indiana and a pre-extradition hearing before transferring him to Indiana. With respect to plaintiff's claim of improper notice, I concluded that defendant could not be held liable under 42 U.S.C. § 1983 because plaintiff had failed to show that defendant knew about the detainer or that he caused his subordinates to disregard the detainer by failing to adequately supervise them. With respect to plaintiff's other claim, I concluded that plaintiff had waived his right to a hearing under the Agreement on Detainers by making a request for a final disposition. (Plaintiff had

brought his claims originally against many other defendants, including various officers employed at the Columbia County jail. He alleged that they too failed to provide him with notice of the detainer. In the order granting plaintiff leave to proceed, I dismissed all of the defendants except for Steve Rowe because the Agreement on Detainers places a duty only on "the official having custody" of an inmates. As the Columbia County sheriff, defendant Rowe was plaintiff's custodian. See Townsend v. Sain, 372 U.S. 293 (1963); Wis. Stat. § 59.27(1).)

Plaintiff has filed a motion for reconsideration, which I construe as a timely motion to alter or amend the judgment under Fed. R. Civ. P. 59. Most of plaintiff's arguments are a rehash of the ones he made in opposing defendant's motion for summary judgment. I need not address these issues a second time. However, plaintiff raises two issues that merit brief attention: (1) the court erred in failing to consider a claim against defendant in his official capacity; (2) it was unfair of the court to dismiss defendant Rowe for lack of personal involvement when the defendants who *were* aware of the detainer had already been dismissed.

First, a claim against defendant Rowe in his official capacity could not succeed. When a party sues a public official in his or her official capacity, the court treats the claim as if it were brought against the entity that the official represents, in this case, Columbia County. Kentucky v. Graham, 473 U.S. 159, 165 (1985). As I explained in the April 23,

2004 opinion and order, Columbia County could not be held liable unless plaintiff demonstrated that it had a policy that caused the violation. Monell v. Dept. of Social Services of City of New York, 436 U.S. 658, 690 (1978). Because plaintiff failed to point to any evidence in the record showing that a county policy contributed to any violation of his rights, summary judgment was granted appropriately to defendant Rowe.

Second, it is understandable that plaintiff would be frustrated over the dismissal of all the defendants in this case. The fact is undisputed that plaintiff had to wait almost five months before he was given enough information to address the charges against him in Indiana. Thus, it would seem that his right under Article III(c) of the Agreement on Detainers to receive "prompt" notice of the detainer was violated. However, the question in this case was not just whether defendant Rowe failed to comply with the Agreement on Detainers, but also whether Rowe could be held liable for money damages under § 1983. Under that statute, an individual cannot be found liable unless he *caused* the deprivation. Wolf-Lillie v. Sonquist, 699 F.2d 864, 869 (7th Cir. 1983). Because the facts show that defendant Rowe did not know about the detainer, plaintiff was not entitled to monetary relief against defendant Rowe.

As plaintiff points out, there *was* evidence that other individuals, such as Darrel Kuhl, knew about the detainer but nevertheless failed to inform plaintiff of the detainer's contents. Thus, Kuhl would meet the personal involvement requirement of § 1983. Unfortunately for

plaintiff, however, Kuhl was not obligated by the Agreement on Detainers to give plaintiff notice of the detainer. As noted above, the duty extends only to the "official having custody of the prisoner," which in this case was defendant Rowe.

It may seem unfair to plaintiff that defendant Rowe is able to avoid liability by remaining in the dark, but under § 1983, lack of actual knowledge is usually a successful defense. If plaintiff could have shown that Rowe remained ignorant *purposefully* so as to avoid the requirements of the Agreement on Detainers, plaintiff would have had a much stronger case. Jones v. City of Chicago, 856 F.2d 985, 992 (7th Cir. 1988) (defendants liable under § 1983 if they "turn a blind eye for fear of what they might see"). Although defendant Rowe may have been negligent in failing to insure that his subordinates acted in accordance with the Agreement on Detainers, there is no evidence he acted deliberately.

It may also seem unfair to plaintiff that the remaining defendants were dismissed, even though they were aware of the detainer and could have done more. However, it is beyond the authority of this court to extend the scope of statutes beyond their plain language. The Agreement on Detainers applies to a prisoner's custodian and no one else. Plaintiff has never argued that it would be more appropriate to view Kuhl as plaintiff's custodian.

Although plaintiff is not entitled under the law to receive money damages, it is important to note that he has not been left without any remedy. If plaintiff had brought his

claim as a petition for a writ of habeas corpus while he was still in custody, a potential remedy would have been dismissal of the charges against him. Carchman v. Nash, 473 U.S. 716 (1985). At a minimum, plaintiff would have been able to obtain an order directing his custodian to provide the information necessary to address the charges in the detainer. However, by the time plaintiff brought this action, he had already obtained both of these remedies. He has been given the opportunity to challenge the Indiana charges, and the charges had been dropped because of the delay in bringing him to trial.

ORDER

IT IS ORDERED that plaintiff Jeffrey Schreiber's motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59 is DENIED. Plaintiff has 30 days from the date of this order to file a notice of appeal, if he intends to take one.

Entered this 13th day of May, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge