IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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MICHAEL D. HARRIS,

Plaintiff,

v.

JOHN McKENNA, JEAN YOUNG and BARBARA SUTTON,

Defendants.

OPINION AND ORDER

04-C-501-C

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In this prisoner civil rights action under 42 U.S.C. § 1983, plaintiff Michael D. Harris alleges that because he is black, defendants John McKenna, Jean Young and Barbara Sutton violated the equal protection clause by conspiring to impose parole conditions that they knew he would violate, such as restrictions that made it difficult for him to live at home and impossible to see his child. Subject matter jurisdiction is present. 28 U.S.C. § 1331.

On March 18, 2005, defendants filed a motion for summary judgment, which plaintiff has not opposed despite his having been warned that if he failed to respond to the motion, the court would accept the opposing party's proposed findings of fact as undisputed. Prelim. Pretrial Conf. Order, Nov. 10, 2004.

Presently before the court is defendants' unopposed motion for summary judgment. Defendants have introduced facts showing that they are entitled to judgment as a matter of law on each of plaintiff's claims. Therefore, their motion will be granted in its entirety.

I find from the facts proposed by defendants and unopposed by plaintiff that the following facts are material and undisputed.

UNDISPUTED FACTS

Defendant John McKenna has been employed by the Wisconsin Department of Corrections as a probation and parole agent since November 1995. As a probation and parole agent, defendant McKenna assists offenders in upholding the court-ordered conditions of their release and helps them secure suitable employment, housing and treatment programs as necessary. Probation and parole agents monitor and restrict the whereabouts, activities and associations of offenders under supervision, commensurate with the recidivism risk the offender may present to the community as a whole. To assess an offender's risk to re-offend, agents interview the offender and review his criminal history. Once the assessment is complete, staff prepare a document entitled "Agent's Assessment and Impressions" that summarizes the offender's various crimes, biography, correctional experience, alcohol and other drug abuse, assaultive history and supervision level.

Plaintiff Michael Harris was convicted of burglary and bail jumping on July 20, 1998

and received a withheld sentence of four years' probation and three years' probation, with the sentences to run concurrently. On November 8, 1999, plaintiff's probation was revoked and on December 27, 1999, plaintiff was sentenced to prison for six years, the term to run concurrently with a nine-month sentence in a local jail. On May 14, 2003, plaintiff was released on parole from the Oshkosh Correctional Institution.

Pursuant to Section 11.04.01-.03 of Chapter 11 of the Probation and Parole Operations Manual entitled "Intrastate Transfer," inmates who are being released from prison are assigned initially to an agent in the county of conviction unless the offender has another active case pending with a different agent at the time of sentencing. In addition, Chapter 11 of the manual states that "[a]n offender may request transfer to another geographic area if it is consistent with the goals and objectives of supervision for the offender. Rules of community supervision require an offender to obtain advance approval to change residence. Such approval may be granted if the offender has obtained verified residence, employment, schooling, or approved treatment in the area." Under Section 11.04.05 of the manual, once a case has been transferred, the agent receiving the transfer request (the "receiving agent") is allowed to reject the case within 30 days of the date that the offender is released from prison.

Plaintiff asked to live with his parents in Wisconsin Rapids. Leotis Watson, a probation and parole agent from Milwaukee County who was assigned to supervise plaintiff,

contacted plaintiff's parents to ask whether plaintiff would be able to reside with them in Wisconsin Rapids should plaintiff's case be transferred. As the initial agent of record, Watson could make as many requests for an offender to transfer as he wished. However, the receiving agent determines whether the parole plan is feasible and decides whether to accept the case. On May 2, 2003, defendant McKenna was assigned to be plaintiff's receiving agent. On May 6, 2003, defendant McKenna informed Watson that he would not approve plaintiff's parents' residence as a place in which plaintiff could reside because the parents owned an aggressive dog that did not allow supervising staff entry into the home and McKenna would have to make multiple home visits. McKenna supervised plaintiff's brother and had ordered him out of the parents' residence after the dog violently confronted McKenna in 2002. McKenna told Watson that if plaintiff wanted to proceed with the case transfer, plaintiff would have to find an alternative address in Wisconsin Rapids before his release from prison.

On May 8, 2003, defendant McKenna informed his supervisor, defendant Jean Young, that he had spoken to plaintiff's father, who told McKenna that he planned to send the dog to a boarding facility until plaintiff could secure alternative housing. After speaking with plaintiff's father, McKenna told Watson that he approved the residence and asked Watson to direct plaintiff to report to the Wood County office within one business day of his release from prison.

Although plaintiff's parents' residence had been approved, on May 15, 2003, plaintiff reported to defendant McKenna's office stating that he did not move in with his parents but with a female friend instead. McKenna did not know plaintiff's female friend. Defendant McKenna warned plaintiff that he should notify McKenna before moving anywhere else.

Defendant McKenna interviewed plaintiff and drafted the "Agent's Assessment and Impressions" document, concluding that plaintiff was at high risk to re-offend and that plaintiff should be supervised at the maximum level. In addition to the assessment, McKenna created a set of probation and parole rules drawn from the Probation and Parole Operations Manual. Plaintiff signed a copy of the rules, which were designed for medium-high risk offenders and were not created on the basis of plaintiff's race. Although rule number 24 to which plaintiff agreed barred him from contacting children under age 18 without prior approval from defendant McKenna, McKenna gave plaintiff temporary approval to have contact with his daughter. McKenna had no reason to believe that plaintiff could not comply with the rules that he had signed.

OPINION

A. Standard of Review

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); Lindemann v. Mobil Oil Corp., 141 F.3d 290, 294 (7th Cir. 1998). If the nonmovant fails to make a showing sufficient to establish the existence of an essential element on which that party will bear the burden of proof at trial, summary judgment for the moving party is proper. Celotex, 477 U.S. at 322.

B. Equal Protection and Conspiracy

In his complaint, plaintiff contended that because he is black, defendants conspired to impose parole conditions that they knew he would violate, such as restrictions that made it difficult for him to live at home and impossible to see his child.

Parole officials may not impose parole conditions for reasons of race discrimination. See, e.g., Alonzo v. Rozanski, 808 F.2d 637, 638 (7th Cir. 1986). The equal protection clause of the Fifth and Fourteenth Amendments prohibits government actors from applying

different legal standards to similarly situated individuals. See, e.g., City of Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432, 439 (1985). Discriminatory intent may be established by showing an unequal application of a policy or system, but conclusory allegations of racism are insufficient. Minority Policy Officers Ass'n v. South Bend, 801 F.2d 964, 967 (7th Cir. 1986). Claims of conspiracies to effect deprivations of civil or constitutional rights may be brought in federal court under 42 U.S.C. § 1983 or §1985(3). To prove a conspiracy, plaintiff needs to show that there was "an agreement between the parties 'to inflict a wrong against or injury upon another,' and 'an overt act that results in damage'" to succeed on his claim. Hampton v. Hanrahan, 600 F.2d 600, 621 (7th Cir. 1979) (citing Rotermund v. United States Steel Corp., 474 F.2d 1139 (8th Cir. 1973)).

The undisputed facts show that defendants did not discriminate against plaintiff because of his race. It is undisputed that plaintiff signed a copy of the probation and parole rules and that those rules were designed for medium-high risk offenders and were not created on the basis of plaintiff's race. Although the rules barred plaintiff from contacting children under age 18 without prior approval from defendant McKenna, McKenna gave plaintiff temporary approval to have contact with his daughter. Furthermore, defendants would have allowed plaintiff to live with his parents, but plaintiff chose to live with a female friend instead. There is no evidence in the record that defendants imposed unreasonable restrictions that would have prohibited plaintiff from living at home or seeing his daughter,

the two things that plaintiff alleges defendants would not let him do because of his race. Therefore, defendants are entitled to summary judgment regarding plaintiff's claims that they conspired against him because of his race and violated the equal protection clause of the United States Constitution.

ORDER

IT IS ORDERED that

1. The motion for summary judgment of defendants John McKenna, Jean Young and Barbara Sutton is GRANTED as to plaintiff Michael Harris's claims of conspiracy and race discrimination;

2. The clerk of court is directed to enter judgment for the defendants and close this case.

Entered this 16th day of June, 2005.

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