

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

KEITH BARTELLI,

Plaintiff

CIVIL NO. 3:CV-04-0904

-vs-

(Judge Kosik)

SERGEANT JASTREMSKI, et al.,

Defendants :

ORDER

AND NOW, this 29th day of October, 2004, IT IS HEREBY ORDERED THAT:

(1) The Report and Recommendations of the Magistrate Judge dated June 3, 2004 (Document 7), is **ADOPTED**;

(2) The plaintiff's request to file an amended complaint is **DENIED**;

(3) The above-captioned action is **DISMISSED** for failure to state a claim pursuant to 28 U.S.C. §1915(e)(2)(B)(ii); and,

(4) The Clerk of Court is directed to **CLOSE** this case and to forward a copy of this Memorandum and Order to the Magistrate Judge.

s/Edwin M. Kosik
United States District Judge

UNITED STATES DISTRICT COURT
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KEITH BARTELLI,

Plaintiff

CIVIL NO. 3:CV-04-0904

-vs-

(Judge Kosik)

SERGEANT JASTREMSKI, et al.,

Defendants :

MEMORANDUM

Before the court are the plaintiff's objections to the Report and Recommendation of Magistrate Judge Thomas M. Blewitt filed on June 3, 2004, recommending that plaintiff's action against defendants be dismissed for failure to state a claim against them pursuant to 28 U.S.C. §1915(e)(2)(B)(ii). For the reasons which follow, we will adopt the Report and Recommendation of the Magistrate Judge.

Background

Plaintiff, Keith Bartelli, an inmate confined at the State Correctional Institution at Dallas, Pennsylvania, filed the instant civil rights action pursuant to 42 U.S.C. §1983 on April 26, 2004. Named as defendants are Sergeant Jastremski, C/O Galabinski and Lt. Blich. In his complaint, plaintiff sets forth two claims:

1. From April 2001 to November of 2003, plaintiff endured deliberate indifference, racial & religious persecution and prejudices, conspiratory vindictive acts by defendant and other staff members. He arbitrarily, capriciously lied, conspired with defendants acting under the "Color of Law."
2. Plaintiff made numerous verbal complaints to defendant about the acts and actions of other defendants. Defendant never said or did nothing to prevent the numerous violations of plaintiff's constitutional and civil rights along with DOC policies who knowingly and personally witnessed many of these acts.

Plaintiff seeks declaratory and injunctive relief. He also seeks compensatory and punitive damages.

On June 3, 2004, the Magistrate Judge filed a Report and Recommendation wherein he recommended that the action be dismissed for failure to state a claim pursuant to 28 U.S.C. §1915(e)(2)(B)(ii). Specifically, the Magistrate Judge found that the plaintiff's complaint contains no specific claim against any of the defendants. The Magistrate Judge goes on to state that a defendant prison official cannot be held liable for the actions of others since the doctrine of *respondeat superior* is not an acceptable basis for liability under §1983 and that personal involvement must be shown. The Magistrate Judge states that plaintiff does not allege personal involvement by defendant Jastremski, Galabinski or Blich.

On June 17, 2004, the plaintiff filed objections to the Magistrate Judge's Report and Recommendation. On August 17, 2004, plaintiff filed a second objection to the Magistrate Judge's Report and Recommendation. In his objections, plaintiff argues the timeliness of his claims. Plaintiff also requests that he be afforded an opportunity to file an amended complaint to set forth a conspiracy claim.

Discussion

When objections are filed to a Report and Recommendation of a Magistrate Judge, we must make a *de novo* determination of those portions of the Report to which objections are made. 28 U.S.C. §636(b)(1)(C); *see Sample v. Diecks*, 885 F.2d 1099, 1106 n.3 (3d Cir. 1989). In doing so, we may accept, reject or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. 28 U.S.C. §636(b)(1); Local Rule 72.3. Although our review is *de novo*, we are permitted by statute to rely upon the Magistrate Judge's proposed recommendations to the extent we, in the exercise of sound discretion, deem proper. *United States v. Raddatz*, 447 U.S. 667, 676 (1980); *Goney v. Clark*, 749 F.2d 5, 7 (3d Cir. 1984).

After reviewing the Magistrate Judge's Report and Recommendation in light of plaintiff's objections, we agree with the Magistrate Judge that the plaintiff's complaint fails to set forth a cause of action pursuant to §1983. While plaintiff's two allegations do use the words "conspiracy" and "acting under 'color of law,'" the plaintiff does not present sufficient allegations to set forth any claim.

While plaintiff requests an opportunity to file an amended complaint, we will deny his request. As the Magistrate Judge points out, plaintiff has already been allowed to amend his complaint once and he has several cases pending before this court. Moreover, prior to filing this action, plaintiff was fully advised by the court of the requirements for filing a civil rights action under §1983. Accordingly, we will adopt the Report and Recommendation of the Magistrate Judge.