

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

DONALD R. WEST, SR., :  
 :  
 Plaintiff, :  
 :  
 v. : Civil Action No. 03-359 JJF  
 :  
 GOVERNOR RUTH ANN MINNER, :  
 WARDEN RICHARD KEARNEY, C/O :  
 LAMONTE HAMMOND, :  
 :  
 Defendants. :

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Donald R. West, Sr., Wilmington, Delaware.  
Pro Se Plaintiff.

Susan D. Mack, Esquire, DEPARTMENT OF JUSTICE, STATE OF DELAWARE,  
Wilmington, Delaware.  
Attorney for Defendants.

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**MEMORANDUM OPINION**

March 8, 2005  
Wilmington, Delaware

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Farnan, District Judge.

Pending before the Court are the Motions To Dismiss filed by Defendant Governor Minner and Defendant Warden Richard Kearney (D.I. 22 and 24, respectively). For the reasons discussed, the Court will grant the motions.

### **I. Background**

Plaintiff Donald R. West, Sr., is a pro se litigant who was incarcerated from November 1, 2002, to October 8, 2003, at the Sussex Correctional Institution in Georgetown, Delaware. Plaintiff filed this action pursuant to 42 U.S.C. § 1983 and proceeds in forma pauperis pursuant to 28 U.S.C. § 1915. By his complaint, Plaintiff alleges two counts of excessive force.

### **II. Parties' Contentions**

By their individual motions, Defendants Minner and Kearney contend (1) they are immune from suit in their official capacity pursuant to the Eleventh Amendment and (2) Plaintiff fails to state a claim against them in their individual capacity. Plaintiff has not filed a response.

### **III. Discussion**

A motion to dismiss tests the legal sufficiency of the complaint. Conley v. Gibson, 355 U.S. 41, 45-56 (1957). In reviewing a motion to dismiss pursuant to Rule 12(b)(6), courts "must accept as true the factual allegations in the [c]omplaint and all reasonable inferences that can be drawn therefrom." Langford v. Atlantic City, 235 F.3d 845, 847 (3d Cir. 2000). A

court will grant a motion to dismiss only when it appears that a plaintiff could prove no set of facts that would entitle him or her to relief. Id.

Supervisory liability cannot be imposed under Section 1983 on a respondeat superior theory. See Monell v. Dep't of Social Services of City of New York, 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). For a supervisory public official to be held liable for a subordinate's constitutional tort, the official must either be the "moving force [behind] the constitutional violation" or exhibit "deliberate indifference to the plight of the person deprived." Sample v. Diecks, 885 F.2d 1099, 1118 (3d Cir. 1989) (citing City of Camden, Ohio v. Harris, 489 U.S. 378, 389 (1989)).

In this case, the Court finds that Plaintiff has not raised any specific allegations against Defendant Minner or Defendant Kearney. Thus, Plaintiff's claim rests entirely on a theory of vicarious or supervisory liability. The Court also finds that nothing in Plaintiff's Complaint indicates that Defendants were the driving force behind the alleged excessive force or that Defendants knew of Plaintiff's allegations and remained deliberately indifferent. Thus, the Court concludes that Plaintiff cannot maintain a Section 1983 claim against Defendant Minner or Defendant Kearney. For these reasons, the Court will grant Defendants' Motions To Dismiss (D.I. 22 and 24).

An appropriate Order will be entered.