

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

HAROLD J. STEVENSON, )  
 )  
 Plaintiff, )  
 )  
 v. ) Civil Action No. 03-1038-KAJ  
 )  
 STANLEY TAYLOR, THOMAS )  
 CARROLL, REBECCA McBRIDE, )  
 and JAMES SHEPARD )  
 )  
 Defendants. )  
 )

**MEMORANDUM ORDER**

**I. INTRODUCTION**

Harold J. Stevenson ("Plaintiff") is a *pro se* litigant currently incarcerated at the Delaware Correctional Center ("DCC") in Smyrna, Delaware. On November 13, 2003, Plaintiff commenced this action by filing a Complaint under 42 U.S.C. § 1983, alleging that Stanley Taylor, Thomas Carroll, Rebecca McBride, and James Shepard<sup>1</sup> (collectively "Defendants") violated his Fourteenth Amendment right to Due Process, by keeping him incarcerated past his maximum release date. (Docket Item ["D.I."] 2.) Presently before the court is Defendants' Motion to Dismiss (D.I. 15; the "Motion") filed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. For the reasons that follow, I will grant Defendants' Motion.

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<sup>1</sup> It appears from the Complaint that Stanley Taylor is Commissioner of the Department of Correction ("DOC"), Thomas Carroll serves as Warden of the DOC, and Rebecca McBride is the Records Supervisor of the DOC. (D.I. 2; D.I. 17.) It also appears that James Shepard is the Pre-sentence Officer for the Kent County Court House. *Id.*

## II. BACKGROUND

On September 6, 1991, Plaintiff pled guilty to second degree robbery and was "sentenced to five (5) years incarceration at Level (V)," followed by one year at Level III probation.<sup>2</sup> (D.I. 2, Attached Extra Sheets ("Attach.") 1 at ¶ 1.)<sup>3</sup> On February 29, 2000, Plaintiff pled guilty to possession of cocaine and was "sentenced to one (1) year incarceration at Level (5) five to be suspended for one (1) year at Level III probation." (*Id.* at ¶ 2.) On September 8, 2000, Plaintiff was found in violation of his probation in connection with his cocaine possession conviction and "re-sentenced to (1) one year incarceration at Level (V) five to be suspended after thirty (30) days, for (1) one year at Level III probation." (*Id.*) Plaintiff's probation in connection with the robbery conviction was continued. (*Id.*)

On June 1, 2001, Plaintiff was again found in violation of his probation following a hearing at which he was represented by counsel. (*Id.* at ¶ 3.) On the robbery conviction, Plaintiff was sentenced "to two (2) years incarceration at Level five (5), to be suspended after (6) six month[s]." On the cocaine possession conviction, he was sentenced to (11) month's [sic] incarceration at Level five (5)." (*Id.*)

Plaintiff made a direct appeal to the Delaware Supreme Court. (*Id.* at ¶ 4.) It appears he raised four issues, one of which is relevant to the issues in this case. (D.I.

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<sup>2</sup>It appears that the majority of procedural background recited by Plaintiff is identical to the facts set forth in *Stevenson v. State*, No. 304, 2001, 2002 WL 31399418 (Del. Sept. 17, 2002).

<sup>3</sup>On October 14, 1993, the Delaware Superior Court modified this sentence "to include a June 10, 1991, effective date and additional special conditions, and to provide for a probationary period of (6) six months at Level IV, . . . followed by one year at Level III." (*Id.*)

2, Attach. 3 at ¶ 6; *Stevenson*, 2002 WL 31399418.) Plaintiff claimed that “his 2-year sentence for [violation of probation] in connection with his robbery conviction was improper because he had only 1 year remaining on that sentence.” (D.I. 2, Attach. 3 at ¶ 6.) After reviewing the claim for plain error, the Delaware Supreme Court denied Plaintiff’s direct-appeal. (D.I. 2, Attach. 2 at ¶ 4.) Plaintiff’s counsel then “filed a motion for re-argument on Plaintiff’s behalf on the basis that his 1991 sentence for robbery including the probationary period may have been satisfied prior to June 1, 2001, the date the Superior court sentenced plaintiff” for violation of probation. (*Id.*) On May 9, 2002, the Delaware Supreme Court remanded the case to the Superior Court for a determination of whether the Superior Court properly sentenced Plaintiff on, June 1, 2001. (*Id.*)

On June 6, 2002, “the Superior Court determined that Plaintiff’s robbery conviction had expired in 1997.” (*Id.* at ¶ 5.) Thus, Plaintiff’s sentence for violation of probation on June 1, 2001, in connection with his robbery conviction, was erroneous. (*Id.*) Plaintiff had no remaining unserved Level V sentences as of June 6, 2002, so the Superior Court ordered his release. (*Id.* at ¶ 6.) After reviewing the Superior Court’s report and the underlying record, the Delaware Supreme Court adopted the findings of the Superior Court. (*Id.*)

Plaintiff alleges that Defendants are liable, both in their official and individual capacities, for unlawfully detaining him from June 1, 2001 to February 10, 2002.<sup>4</sup> (*Id.* at ¶ 7; D.I. 17 at 16.) Specifically, Plaintiff alleges that Defendants deprived him of his

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<sup>4</sup>Plaintiff states in his Answering Brief that Defendants are liable for holding him “68 days and six months beyond his maximum release date.” (D.I. 17 at 18.)

liberty without due process of law in violation of the Fourteenth Amendment. (D.I. 2, Attach. 1 at 1.)

### III. STANDARD OF REVIEW

In deciding a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), the factual allegations contained in the Complaint must be accepted as true. *Cruz v. Beto*, 405 U.S. 319, 322 (1972) (*per curiam*). A *pro se* complaint can only be dismissed for failure to state a claim if it appears “beyond doubt that a plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

### IV. DISCUSSION

In order to recover in this action, Plaintiff must show that he was deprived of a constitutional right by a person acting under color of state law. See 42 U.S.C. § 1983. The Fourteenth Amendment provides that no state shall “deprive any person of life, liberty, or property, without due process of law.” U.S. CONST. amend. XIV, § 1.

However,

[s]ection 1983 does not provide a cause of action for every wrongful or improper deprivation of either liberty or property by a state without regard to the process by which it was accomplished. It is not an insurance policy against mistakes being made by those acting under the color of state law. It only insures against mistakes made in the absence of “due process.”

*Haygood v. Younger*, 718 F.2d 1472, 1481 (9th Cir. 1983) (See *Baker v. McCollan*, 443 U.S. 137, 145 (1979)). To prove a violation of the Due Process Clause, a plaintiff must show that a constitutionally protected liberty or property interest is at issue, and if so,

that the state did not give him notice or an opportunity to be heard prior to depriving him of that protected interest. *Bd. of Regents v. Roth*, 408 U.S. 564, 569 (1972).

The Defendants argue that they are entitled to qualified immunity. (D.I. 15 at 6.) Qualified immunity insulates government officials performing discretionary functions "from liability for civil damages in so far as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). In a Section 1983 action, "it is clear that claims of qualified immunity are to be evaluated using a two-step process. First, the court must determine whether the facts, taken in the light most favorable to the plaintiff, show a constitutional violation. If the plaintiff fails to make out a constitutional violation, the qualified immunity inquiry is at an end; the officer is entitled to immunity." *Bennett v. Murphy*, 274 F.3d 133, 136 (3d Cir. 2002) (following *Saucier v. Katz*, 533 U.S. 194 (2001)). If the plaintiff has raised a constitutional violation, the second step is to determine whether the constitutional right was clearly established. *Id.* The question then becomes whether, "in the factual scenario established by the plaintiff, ... a reasonable officer [would] have understood that his actions were prohibited[.]" *Id.* As a matter of law, "[i]f it would not have been clear to a reasonable officer *what the law required* under the facts alleged, he is entitled to qualified immunity." *Id.* at 136-37 (emphasis in original).

Plaintiff asserts in his Answering Brief that Defendants violated his due process rights when they failed to grant him relief after he informed them in a written letter that

he was being held beyond the expiration of his sentence.<sup>5</sup> (D.I. 17 at 18.) However, Plaintiff concedes that “Defendants were not involved in or responsible for directing his conviction or imposing his sentence;” rather, he contends that Defendants lacked authority to detain him beyond his maximum release date and thus, deprived him of his liberty without due process. (D.I. 17 at 18.) According to the record, however, Defendants detained Plaintiff pursuant to a sentencing order issued by the Superior Court. (D.I. 2, Attach. 1 at ¶ 3.) Plaintiff was afforded due process through his repeated access to the courts, which ultimately vacated Plaintiff’s improper sentence. (*Id.* at ¶ 6.) The record further shows that Defendants released Plaintiff on June 6, 2002, when ordered to do so by the Superior Court. (*Id.* at ¶ 8.)

Determining whether an inmate has been properly sentenced is a job for the courts. “Prison officials do not have the authority to amend or alter a sentencing order issued by a court.” *Carter v. Brady*, Civ. A. No. 99-757-JJF, 2001 WL 34368378 (D. Del. Mar. 30, 2001). Therefore, in the absence of any proof that Defendants acted in bad faith or caused unreasonable delay, Defendants did not act in a constitutionally unreasonable manner, and are entitled to qualified immunity.

Defendants correctly assert that Plaintiff’s Complaint fails to allege facts that could warrant a finding that Defendants were personally involved in, or responsible for, a constitutional violation upon which a Section 1983 claim can be based.<sup>6</sup> (D.I. 15 at 7.)

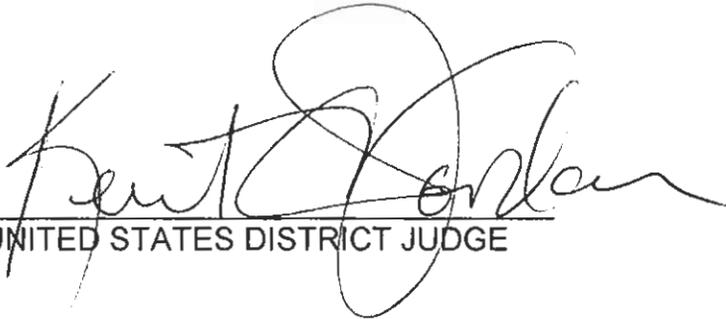
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<sup>5</sup>It is unclear from Plaintiff’s Answering Brief as to when that notice was sent.

<sup>6</sup>Defendants also argue that Plaintiff failed to exhaust his administrative remedies under DOC Policy 4.4. Unfortunately, it appears that Defendants simply copied a portion of a previous brief from another case on this topic, since the briefing discusses a failure to provide medical care, a matter not at issue in this case, and it fails entirely to address the matters that

**V. CONCLUSION**

Accordingly, it is hereby ordered that Defendants' Motion to Dismiss (D.I. 15) is GRANTED with prejudice.

  
UNITED STATES DISTRICT JUDGE

April 28, 2005  
Wilmington, Delaware

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are at issue in this case. In short, it's impossible to tell from Defendants' briefing what it is Plaintiff should have done to exhaust his administrative remedies.