IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

RONELLE L. JONES,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No.
	:	02-307-JJF
JAMES GARDELS and THOMAS CARROLL,	:	
	:	
Defendants.	:	

Ronelle L. Jones, Pro Se Plaintiff.

Stuart B. Drowos, Esquire, Deputy Attorney General, DELAWARE DEPARTMENT OF JUSTICE, Wilmington, Delaware.
Attorney for Defendants.

MEMORANDUM OPINION

March 27, 2003
Wilmington, Delaware

FARNAN, District Judge

Before the Court is Defendants' Motion to Dismiss (D.I. 11). For the reasons discussed below, the Motion will be granted in part and denied in part.

BACKGROUND[1]

On September 27, 2001, Correctional Officer James Gardels and four other corrections officers entered Ronelle Jones' cell at the Delaware Correctional Center, Smyrna, Delaware, to retrieve an unaccounted for razor. (D.I. 2 at 3). When Officer Gardels entered the cell, Mr. Jones was lying on the bed. Id. Mr. Jones and Officer Gardels "had some words," which led to Officer Gardels smacking Mr. Jones with a newspaper. Id. at 3-4. Thereafter, the other officers grabbed Mr. Jones and held him while Officer Gardels hit Mr. Jones in the face and back with handcuffs and called him a "nigger." Id. at 4. The officers left Mr. Jones on the floor of his cell, where he remained for several hours. Id. Mr. Jones' immobility was due in part to the aggravation of a back injury he had previously sustained. Id. At some point, Lieutenant Michael Welcome found Mr. Jones lying in his cell with red marks on his face and took him to the

[1] In reviewing a motion to dismiss for failure to state a claim, "all allegations in the complaint and all reasonable inferences that can be drawn therefrom must be accepted as true and viewed in the light most favorable to the non-moving party." Strum v. Clark, 835 F.2d 1009, 1011 (3d Cir. 1987). Therefore, the relevant facts have been taken from Plaintiff's Complaint (D.I. 2).

infirmary. Id.

On April 29, 2002, Mr. Jones filed the instant action pursuant to 42 U.S.C. § 1983 alleging Eighth and Fourteenth Amendment Due Process violations against Officer Gardels and Warden Thomas Carroll. On July 18, 2002, Defendants moved to dismiss Mr. Jones' Complaint for failure to state a claim (D.I. 11). Mr. Jones' response to Defendants' Motion was due on August 1, 2002, and has not been received as of March 24, 2003. Accordingly, the Court will decide the Motion on the record before it.

STANDARD OF REVIEW

The instant Motion to Dismiss is brought under Rule 12(b)(6) of the Federal Rules of Civil Procedure. The purpose of a motion to dismiss pursuant to Rule 12(b)(6) is to test the legal sufficiency of a complaint. Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Strum v. Clark, 835 F.2d 1009, 1011 (3d Cir. 1987). In reviewing a motion to dismiss for failure to state a claim, "all allegations in the complaint and all reasonable inferences that can be drawn therefrom must be accepted as true and viewed in the light most favorable to the non-moving party." Strum, 835 F.2d at 1011; see also Jordan v. Fox, Rothschild, O'Brien & Frankel, 20 F.3d 1250, 1261 (3d Cir. 1994). This is especially true when the complaint is made pro se. Estelle v. Gamble, 429 U.S. 97, 106 (1976). A court may dismiss a complaint for failure to state

a claim only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Jordan, 20 F.3d at 1261.

DISCUSSION

By their Motion, Defendants contend that dismissal is appropriate because Defendants did not use force, de minimus or otherwise, against Mr. Jones. Defendants contend that the red marks on Mr. Jones' face, characterized as minor contusions, do not support his allegations of being assaulted with handcuffs and are de minimus injuries. Defendants also assert the affirmative defenses of qualified immunity and sovereign immunity. Finally, Warden Carroll contends dismissal is appropriate as to him individually because Mr. Jones does not allege that Warden Carroll was personally involved in the alleged deprivation. Further, Warden Carroll contends that under Section 1983 he cannot be held liable based solely on the theory of respondent superior.

"[W]henever prison officials stand accused of using excessive physical force in violation of the Cruel and Unusual Punishments Clause, the core judicial inquiry is ... whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm." Hudson v. McMillian, 503 U.S. 1, 6-7 (1992). A correctional

officer's use of objectively de minimus force does not violate the Eighth Amendment. Hudson, 503 U.S. at 9-10.

In determining whether a correctional officer has used excessive force in violation of the Eighth Amendment, courts look to several factors including:

> (1) the need for the application of force; (2) the relationship between the need and the amount of force that was used; (3) the extent of the injury inflicted; (4) the extent of the threat to the safety of staff and inmates, as reasonably perceived by responsible officials on the basis of facts known to them; and (5) any efforts made to temper the severity of the forceful response.

Smith v. Mensinger, 293 F.3d 641, 649 (3d. Cir. 2002)(citing Brooks v. Kyler, 204 F.3d 102, 106 (3d. Cir. 2000)). A fact finder could consider the de minimus nature of injuries along with all of the other circumstances in concluding that the force that was applied could not have risen to the level required for an Eighth Amendment violation. Id. "However, that is an issue of fact to be resolved by the fact finder based upon the totality of the evidence; it is not an issue of law a court can decide." Id.

In the instant case, Mr. Jones has alleged that he was held down and beaten with handcuffs after having words with Officer Gardels. The Court concludes that these facts satisfactorily allege an Eighth Amendment violation. If true, these allegations describe a malicious use of force that violates conventional standards. Therefore, the Court concludes that Mr. Jones has

stated a claim as to Officer Gardels and will now examine Defendants' affirmative defenses.

Under the Eleventh Amendment of the United States Constitution, a state may not be sued in a federal court without its consent. U.S. Const., amend. 11. When an individual who works for the state is sued in their official capacity, the reality is that it is the state that will pay damages. Therefore, when an individual who works for the state is sued in their official capacity, it is the state, not the individual, being sued. Pagano v. Hadley, 535 F. Supp. 92, 97 (D. Del. 1982). The Eleventh Amendment thus bars lawsuits against state actors in their official capacities in a federal court. In the instant case, the Court concludes that Mr. Jones' claim against Defendants in their official capacities violates the Eleventh Amendment and must be dismissed.

Under the doctrine of qualified immunity, state officials may not be sued in their individual capacities for actions made during the performance of their official duties unless the conduct violated "clearly established" rights. See Anderson v. Creighton, 483 U.S. 635, 639 (1987). The right to free from the use of excessive physical force in violation of the Cruel and Unusual Punishment Clause was clearly established at the time of the events at issue, see e.g., Hudson v. McMillian, 503 U.S. 1, 6-7 (1992), and thus, the Court concludes that the doctrine of

qualified immunity is unavailable to Defendants.

To establish a claim under Section 1983, Mr. Jones must allege some evidence of personal involvement, knowing acquiescence or participation of each Defendant. Pennsylvania v. Porter, 659 F.2d 306, 336 (3d. Cir. 1981)("[T]he officials' misconduct cannot be merely a failure to act. Such officials must have played an affirmative role in the deprivation of the plaintiffs' rights, i.e., there must be a causal link between the actions of the responsible officials named and the challenged misconduct."). In the instant case, Mr. Jones' Complaint is devoid of any allegations that Warden Carroll was personally involved in the alleged assault. Warden Carroll was named in this action because of his supervisory position; however, liability under Section 1983 cannot be predicated upon a theory of respondeat superior. Gay v. Petsock, 917 F.2d 768, 771 (3d Cir. 1990). Accordingly, the Court will dismiss the claims against Warden Carroll.

CONCLUSION

For the reasons discussed, Defendants' Motion to Dismiss (D.I. 11) will be granted in part and denied in part.

An appropriate Order will be entered.

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JAMES GARDELS and THOMAS CARROLL,	:	
	:	
Defendants.	:	

ORDER

At Wilmington this 27th day of March 2003, for the reasons set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that:

(1) Defendants' Motion to Dismiss (D.I. 11) is **GRANTED** as to Warden Carroll and Officer Gardels in his official capacity and **DENIED** as to Officer Gardels in his individual capacity;

(2) A Rule 16 Scheduling Conference will be held on **Wednesday, April 30, 2003, at 12:30 p.m.** in Courtroom 4B on the 4th Floor, Boggs Federal Building, Wilmington, Delaware;

(3) Obligation of Defendant's Attorney. Defendant's attorney shall make all necessary arrangements for guards and transportation of Plaintiff Ronelle L. Jones, who is in State custody, to and from prison and this Courthouse, in order for Plaintiff to attend the Rule 16 Scheduling Conference.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE