

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

ANTHONY DECIANTIS :
Plaintiff, :
 :
vs. : C.A. No. 87-0149 L
 :
JOHN J. MORAN, Director, :
Department of Corrections; :
DONALD O. ELLERTHORPE, Warden :
of the ACI; JAMES BERARD, :
Deputy Director at the Maximum :
Security Facility; RONALD :
BRODEUR, Captain at the Maxi- :
mum Security Facility; GEORGE :
ELIFSIADES, Correctional Offi- :
cer at the Maximum Security :
Facility; CAROL GETER, Cor- :
rectional Officer in the ACI :
Tactical Squad; MICHAEL E. :
REIS, Correctional Officer in :
the ACI Tactical Squad; and :
JOHN DOE, Correctional Officer :
at the Maximum Security Fa- :
cility, in their individual :
and official capacities :
Defendants, :

MEMORANDUM AND ORDER

RONALD R. LAGUEUX, United States District Judge.

This matter concerns the question of whether plaintiff was deprived of property without due process of law under the Fourteenth Amendment to the United States Constitution.

In December of 1982, plaintiff Anthony DeCiantis commenced a period of incarceration at the Rhode Island Adult Correctional Institution, Maximum Security Facility. Plaintiff alleges that from this time through April of 1986, his family brought him "personal property" "to be used and worn by him during his period of incarceration."

Plaintiff further claims that from April 24, 1986 through April 27, 1986, defendants conducted a "shakedown" of the Maximum Security Facility which resulted in the seizure of an "unbelievable amount" of personal property. Both during and after this shakedown, plaintiff contends defendants asserted their "policy" of a right "not only to seize said personal property from him but also to confiscate the property permanently."

As a result of this alleged conduct on the part of defendants, plaintiff filed an action in this Court under 42 U.S.C. § 1983. In his complaint plaintiff essentially claims that he was deprived of a right "secured by the Constitution of the United States": that no person shall be deprived of property without due process of law. Defendants answered plaintiff's complaint by stating that it failed to state a claim upon which relief could be granted.

The matter was referred to the Magistrate who recommended that plaintiff's complaint be dismissed for the reason asserted by defendants. In making this recommendation, the Magistrate's reasoning was twofold. First, plaintiff failed "to aver with particularity who did what to whom and why concerning his identifiable property." Secondly, "the pro se plaintiff in the instant action has available state tort remedies which provide appropriate means of redress for his alleged property deprivation claim", thus, as a matter of law plaintiff was not deprived of due process of law. Plaintiff objected to the Magistrate's Report and Recommendation and the matter was referred to this Court for de novo review.

A starting point for considering the merits of a complaint brought pro se is to apply the standard set forth by the United States Supreme Court in the case of Haines v. Kerner, 404 U.S. 519 (1972). There, the Court held that pro se complaints are subject to "less stringent standards than formal pleadings drafted by lawyers." Id. at 520.

Application of this standard to the present case reveals plaintiff's complaint to be vague in several

respects. It states neither the specific type of personal property taken from plaintiff nor who confiscated the property. Nonetheless, it is not for this reason that the complaint must be dismissed. Rather, it is for the second reason outlined in the Magistrate's Report and Recommendation.

Even were the Court to assume that all the named defendants permanently deprived plaintiff of non-contraband personal property, plaintiff would not have been deprived of property without due process of law. In reaching this conclusion, it is necessary to delineate what this case does not involve. Although plaintiff alleges that defendants asserted a "policy" of permanently confiscating plaintiff's property, plaintiff has not averred any facts which support this assertion. There are absolutely no facts pleaded in plaintiff's complaint which indicate that defendant had an implied policy of permanently confiscating inmates' non-contraband personal property. Were it otherwise, plaintiff would have set out other instances where defendants had acted in the manner plaintiff alleges.

Nor has plaintiff averred that defendants had an express policy of permanently confiscating the personal

property of inmates or that there existed statutory authority for them to do so. Indeed, plaintiff concedes that it was defendants' "actions" which allegedly denied plaintiff his due process rights under the Fourteenth Amendment. This case, then, concerns the alleged conduct of defendants during and after one particular instance: the shakedown of April, 1986.

In this regard, the case of Hudson v. Palmer, 468 U.S. 517 (1984) is decisive. In that case, Virginia prison authorities conducted a "shakedown" of an inmate's locker and cell for contraband. During this procedure, the authorities allegedly intentionally destroyed some of the inmate's non-contraband personal property. Id. at 519. Consequently, the inmate brought a pro se action against the authorities under 42 U.S.C. § 1983 alleging that he had been deprived of property without due process of law. Id. at 520.

Faced with this complaint, defendant there moved for summary judgment. The district court granted this motion and the matter was appealed to the Fourth Circuit. That Court affirmed. The matter was then reviewed by the

United States Supreme Court which affirmed both lower court decisions on the due process issue.

In rendering its decision, the Court reasoned as follows:

When deprivations of property are effected through random conduct of a state employee, predeprivation procedures are simply 'impracticable' since the state cannot know when such deprivations will occur.

Id. at 533. This was true regardless of whether the conduct was of an intentional or negligent character. Id. Thus, post-deprivation remedies afforded the complainant was all the process that was "due" under the Fourteenth Amendment to the United States Constitution.

The question then arose whether a Virginia common law action could provide plaintiff with an adequate mode of redressing his property loss without violating the strictures of the due process clause. Id. at 534. The court held that it did. The mere fact that a tort suit might not fully compensate plaintiff was not sufficient to undermine the adequacy of such a remedy in terms of due process. Id. at 535. Nor was a potential tort suit inadequate because it might be barred by the doctrine of sovereign immunity. Id. at 536. The State of Virginia had

expressly waived the doctrine, and state employees could be held liable for intentional torts. Id.

Application of these rules to the present case renders the same result as in Hudson. Plaintiff alleges that defendants intentional random unauthorized conduct during and after the shakedown led to the permanent confiscation of his personal property. Such conduct under Hudson only entitles plaintiff to post-deprivation relief.

As in Hudson, the question then arises what form may this relief take. Plaintiff contends that he is entitled to a hearing by the prison authorities themselves. This contention misses the mark. Hudson indicates that such relief need not be annexed to the seizure process itself. Rather, the relief may take the form of an action at common law. Plaintiff, here, may bring an action in tort for conversion against defendants in Rhode Island's state court system for the value of his property.

Nor would such an action be barred by the doctrine of sovereign immunity. Like the State of Virginia, "the State of Rhode Island or any political subdivision thereof" has waived its sovereign immunity with regards to "all

actions of tort" up to \$100,000. R.I. Gen. Laws §§ 9-31-1, -2 (1985). A common law conversion action, then, provides plaintiff with adequate post-deprivation relief for any property taken from him by defendants. As a matter of law, this is all the "process" which plaintiff is "due" under the Fourteenth Amendment to the United States Constitution.

For all the above reasons, the Court adopts the Magistrate's Report and Recommendation and plaintiff's complaint is dismissed for failure to state a claim upon which relief could be granted.

It is so Ordered.



Ronald R. Lagueux
United States District Judge

11/3/87
Date