

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

NATA BOB,

Plaintiff, :  
 :  
v. : PRISONER  
 : CASE NO. 3:02CV1785(RNC)  
 :  
JOHN J. ARMSTRONG, et al., :  
 :  
Defendants. :

RULING AND ORDER

Plaintiff Nata Bob ("Bob"), a Connecticut inmate proceeding pro se, brings this action pursuant to 42 U.S.C. § 1983 against officials of the Connecticut Department of Correction ("DOC") charging them with deliberate indifference to his serious medical needs and improper interference with his outgoing legal mail.<sup>1</sup> Bob has moved for summary judgment and the defendants have moved to dismiss. Bob's motion is denied without prejudice because it fails to comply with the requirements of Local Rule of Civil Procedure 56.<sup>2</sup>

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<sup>1</sup> The named defendants are John J. Armstrong, Dr. Peter Immordini, Fred Levesque and Captain Santiago, sometimes referred to in plaintiff's pleadings as Captain Santiago.

<sup>2</sup> The Rule provides: "There shall be annexed to a motion for summary judgment a document entitled 'Local Rule 56(a)1 Statement,' which sets forth in separately numbered paragraphs a concise statement of each material fact as to which the moving party contends there is no genuine issue to be tried." In addition, the moving party must submit affidavits, deposition testimony or other documentary evidence supporting

Defendants' motion is granted in part and denied in part for the reasons set forth below.

I. Facts

For the purpose of ruling on the motion to dismiss, the court accepts as true the following facts taken from the amended complaint.

Before his arrest in April 2000, Bob underwent two surgical procedures on his left wrist for injuries sustained in a 1998 accident. At the time of his arrest, his doctors were prescribing physical therapy and the medication Celebrex. The problems with his wrist were aggravated when he was handcuffed incident to his arrest.

After Bob was placed in DOC custody, he was sent to physician Immordini for treatment of complaints of wrist pain. Immordini refused to prescribe Celebrex, telling Bob it was too costly. He prescribed Motrin instead, which caused Bob to suffer a negative side effect, for which he was later treated. Immordini, who is not a hand surgeon, failed to order x-rays or an MRI to determine the cause of the swelling and inflammation in Bob's left hand, and refused to allow Bob to see a specialist.

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his claim that he is entitled to judgment as a matter of law. Bob has not submitted a Local Rule 56(a)1 Statement or any affidavits or other evidence in support of his motion.

When Bob could not obtain the medical treatment he desired, he attempted to contact the Inmates' Legal Assistance Program ("ILAP"). The mail room staff withheld his correspondence to ILAP, which included his medical records. Bob then contacted defendant Santiago, a prison official, about the interference with his correspondence with ILAP. Santiago did not respond to Bob's request. The correspondence was mailed only after Bob successfully filed a grievance over the issue. By impeding Bob's contact with ILAP, Santiago delayed Bob's receipt of proper medical treatment and thus delayed a reduction in his wrist pain.

Later, Bob was transferred to Carl Robinson Correctional Institution. In response to Bob's request, a doctor there obtained approval for a "non formular prescription" of Celebrex, which eased Bob's pain without the adverse side effect caused by the Motrin.

Whenever Bob was transported by DOC staff, he was placed in handcuffs, which caused "injuries and pain" to his left wrist. Defendant Levesque was in charge of prison transportation. Defendant Armstrong was the Commissioner of DOC at the pertinent time.

## II. Discussion

The defendants raise four grounds in support of their

motion to dismiss: (1) all claims for damages against the defendants in their official capacities are barred by the Eleventh Amendment; (2) Bob fails to allege facts demonstrating the personal involvement of Armstrong and Levesque; (3) Bob fails to state a claim against Immordini; and (4) Santiago did not violate Bob's constitutional right of access to the courts. Bob has filed papers in opposition to the motion to dismiss.<sup>3</sup>

A. Eleventh Amendment Immunity

Generally, a suit for recovery of money may not be maintained against the state itself, or against any agency or department of the state, unless the state has waived its sovereign immunity under the Eleventh Amendment. This immunity also covers state officials sued for damages in their official capacity. Kentucky v. Graham, 473 U.S. 159, 169 (1985). Bob's complaint requests no relief other than money damages. Because an award of damages against the defendants in their official capacities is barred by the Eleventh Amendment, the motion to dismiss is granted as to all claims against the defendants in their official capacities.

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<sup>3</sup> Bob contends that the motion to dismiss should be denied because it was filed a few days late. I disagree. The issues raised by the motion are not going to disappear and everyone is better served if I deal with them now.

B. Personal Involvement of Armstrong and Levesque

Plaintiff has no cause of action under § 1983 against Armstrong or Levesque unless they were personally involved in the alleged wrongdoing or contributed in some way to causing the plaintiff's alleged injuries. See Leonard v. Poe, 282 F.3d 123, 140 (2d Cir. 2002). Bob's allegations against Armstrong and Levesque do not satisfy this test. He makes no allegation that either of them knew about the problems he had with his wrist and legal mail, or that they helped cause those problems in some way. Accordingly, the claims against these defendants must be dismissed.

C. Failure to State a Claim Against Immordini

Deliberate indifference to a prisoner's serious medical need constitutes cruel and unusual punishment in violation of the Eighth Amendment. Estelle v. Gamble, 429 U.S. 97, 104 (1976). There are both subjective and objective components to the deliberate indifference standard. The alleged deprivation must be "sufficiently serious" in objective terms, and the charged prison official must have acted with "a sufficiently culpable state of mind," meaning with awareness of a substantial risk of serious harm to the plaintiff. Hathaway v. Coughlin, 37 F.3d 63, 66 (2d Cir. 1994). An allegation that a course of treatment was adopted for

financial reasons, rather than as a result of sound medical judgment, may in some cases satisfy the subjective component of deliberate indifference. Chance v. Armstrong, 143 F.3d 698, 702-04 (2d Cir. 1998).

The defendants do not dispute Bob's claim that he suffers from a serious medical need. Thus, for the purpose of deciding this motion, the court assumes that Bob could provide evidence to satisfy the objective component of the deliberate indifference test.

On the subjective prong, the defendants urge that the complaint alleges nothing more than a difference of opinion about treatment. However, Bob alleges that Immordini refused to order Celebrex because the drug was too expensive, and failed to order indicated diagnostic procedures. If financial considerations induced Immordini to ignore a substantial risk of harm to Bob, the subjective element of the deliberate indifference test may be met. Thus, the defendants' motion to dismiss is denied as to the Eighth Amendment claim against Immordini in his individual capacity.

D. Access to Courts

Bob's allegation that Santiago failed to respond to his request concerning the delay in sending out his legal mail can be construed as a claim that Santiago denied Bob access to the

courts, or as a claim that Santiago violated Bob's constitutional right to send or receive mail, with the additional damage of prolonging his wrist pain. Davis v. Goord, 2003 U.S. App. LEXIS 13030, at \*7-8 (2d Cir. 2003).

The defendants have construed this allegation as a claim that Bob was denied access to the courts. To survive a motion to dismiss, a plaintiff's complaint of denial of access to courts must allege that the defendant's actions resulted in actual injury to the plaintiff such as the dismissal of an otherwise meritorious legal claim. Id. Bob alleges that when Santiago failed to respond to his request within one week, he filed an administrative grievance. The grievance was successful and the correspondence was sent to ILAP. Because Bob has not alleged that Santiago's actions prevented him from redressing his complaints, he has not alleged facts demonstrating an actual injury. Accordingly, the defendants' motion to dismiss is granted with respect to any claim that Santiago violated Bob's right of access to the courts.

On the other hand, the defendants have not addressed any possible claim for violation of Bob's constitutional right to send and receive mail or for the prolongation of Bob's pain. Thus, the court does not consider the viability of these claims, which remain open.

### III. Conclusion

Accordingly, Bob's motion for summary judgment is denied and defendants' motion to dismiss is granted in part and denied in part. The motion to dismiss is granted as to the claims against all defendants in their official capacities, the claims against defendants Armstrong and Levesque in their individual capacities, and any claim of denial of access to the courts against defendant Santiago in his individual capacity. The motion is denied in all other respects. As a result of this ruling and order, the claims that remain open are the claim against defendant Immordini in his individual capacity for deliberate indifference to a serious medical need and the claim against defendant Santiago in his individual capacity based on the alleged interference with plaintiff's right to send legal mail.

So ordered this 26th day of August, 2003, at Hartford, Connecticut.

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Robert N. Chatigny  
United States District Judge