

**IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS
DIVISION OF SAINT CROIX**

REGINALD ARTURO WILLIAMS,	)	
Plaintiffs,	)	CIV. NO. 23/2000
	)	
	)	ACTION FOR DAMAGES
GOVERNMENT OF THE VIRGIN ISLANDS,	)	
BUREAU OF CORRECTIONS,	)	
Defendant.	)	<u>NOT FOR PUBLICATION</u>

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CABRET, P.J.

MEMORANDUM OPINION
(February 25, 2002)

THIS MATTER is before the Court on the Defendants' Motion to Dismiss the complaint for failure to state a claim. The plaintiff has not opposed the motion. For the following reasons, the defendants' motion will be granted in every respect, as more fully discussed below.

STATEMENT OF THE FACTS

Plaintiff alleges that, while imprisoned at the Golden Grove Correctional Facility on St. Croix, prison officials made a verbal promise to compensate him for providing music instruction to other inmates but failed to do so. Plaintiff says his internal grievances and complaints to prison officials were ignored, and the dispute was never resolved. Plaintiff therefore brought

this action, on his own behalf, to recover damages arising from the failure of the Government of the Virgin Islands, Bureau of Corrections ("Government"), to pay for such music instruction, which he claims he provided without pay. He grounds his complaint on Title 42, Sections 1983, 1985 and 1986, alleging that officials, through their deliberate indifference, violated the Eighth Amendment's prohibitions against cruel and unusual punishment and his right to constitutional due process. Additionally, Plaintiff alleges that officials conspired to violate his rights, under Sections 1985 and 1986. Finally, Plaintiff claims damages for intentional and negligent infliction of emotional distress, based on his embarrassment and inability to care for his minor son, allegedly as a result of the defendants' conduct.

Initially, Plaintiff named only the Government of the Virgin Islands and various prison officials, in their official capacity. He has now filed a motion to amend his complaint to also name those officials in their individual capacity. The Government previously filed a Motion for Summary Judgment. However, following a hearing on the matter, the Court afforded the defendant an opportunity to amend his complaint to more clearly state all claims and relief sought. In that order, entered October 24, 2000, the Court additionally allowed the parties to file supplemental memoranda. The defendants, thereafter, filed the instant motion.

DISCUSSION

In reviewing a motion to dismiss, the Court must determine whether the complaint states facts sufficient to show the existence of a cognizable claim and to adequately notify Defendant of the cause of action alleged. *See Conley v. Gibson*, 355 U.S. 41 (1957). All facts and inferences must be viewed in the light most favorable to the non-movant, and a motion to dismiss denied unless it "appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *See Id.*; *Quinones v. United States*, 496 F.2d 1269, 1271, 1273 (3d Cir. 1974).

Claims Against Government Under Title 42

First, the Court must dismiss Plaintiff's claims against the Government of the Virgin Islands ("Government") for failure to state a claim under Title 42, Sections 1983, 1985 and 1986 of the United States Code, because the territory is not a "person" within the meaning of those

provisions. See *Eddy v. Water and Power Auth.*, 35 V.I. 441 (D.V.I. 1997) (citing *Will v. Michigan Department of State Police*, 491 U.S. 58, 64-66 (1989); *Ngiraingas v. Sanchez*, 495 U.S. 182 (1990)). The complaint, therefore, fails to state a claim for which relief is available under Sections 1983, 1985 or 1986. Where claims against the territory are not cognizable under Section 1983, claims against government actors, in their official capacities, also may not be brought under that section. *Id.*

Claims Against Individual Defendants Under Title 42

Plaintiff has additionally moved to amend his complaint to include the named officials of the Bureau of Corrections in their individual capacity. These claims are also brought under Title 42, Sections 1983, 1985 and 1986 of the United States Code. As bases for this claim, Plaintiff alleges the named officials violated the Eighth Amendment's prohibitions against cruel and unusual punishment and violated his due process rights, through their deliberate indifference to his complaints regarding alleged right to payments as a music instructor.

Section 1983 provides a remedy only for the deprivation of "rights, privileges, or immunities secured by the Constitution and laws." 42 U.S.C. § 1983. Thus, not every deprivation is actionable; only those provided by the Constitution are. See *Blair v. Zimmerman*, 1987 WL 8826 (E.D. Pa. 1987), *aff'd without opinion*, 833 F.2d 303 (3d Cir. 1987); *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

To establish a claim under Section 1983, Plaintiff must show that there was a deprivation of rights to which he had a constitutional entitlement, and that such deprivation shocks the conscience. See *Eddy v. Water and Power Auth.*, 35 V.I. 441 (D.V.I. 1997) (citing *Collins v. City of Harker Heights*, 503 U.S. 115, 128 (1992)(holding that city's indifference to safety or training of employees didn't meet the "shock the conscience" test)); see also *Fagan v. City of Vineland*, 22 F.3d 1296, 1308-09 (3d Cir. 1994) (holding this test requires more than reckless indifference by state actors).

Therefore, to maintain an action under Section 1983, Plaintiff must establish that he had some constitutional entitlement to being placed on the payroll and receiving payment from the Bureau of Corrections for providing music instruction to other inmates, and that the defendants' failure to do so shocks the conscience. Courts have resolved this issue against the inmate,

holding that the decision to pay an inmate for prison services is within the discretion of a prison and is not a constitutional right under Section 1983. *See Hrbek v. Farrier*, 787 F.2d 414, 416 (8th Cir. 1986) (holding there was no actionable conduct under section 1983, because inmate had no protectable property interest in prison wages, those decisions being discretionary); *Sigler v. Lowrie*, 404 F.2d 659 (8th Cir. 1960), *cert. denied* 395 U.S. 940; *X v. Brierley*, 457 F. Supp. 350 (E.D.Pa. 1978)); *see also Groman v. Township of Manalapan*, 47 F.3d 628, 633 (3d Cir. 1995) (Section 1983 provides a cause of action to individuals who have been deprived of a federal right by a person acting "under color of state law."). Having shown no federal right to prison wages, the plaintiff cannot assert a claim under Section 1983. Similarly, sections 1985 and 1986 are wholly inapplicable to the facts of this case. Therefore, even if Plaintiff's Motion to Amend the complaint is granted, his claim cannot survive the defendants' Motion to Dismiss.

Emotional Distress Claims

Plaintiff additionally claims intentional and negligent infliction of emotional distress resulting from the Bureau of Corrections' alleged failure to pay him for musical instruction. For the following reasons, both claims must be dismissed.

First, the plaintiff's claim of intentional infliction of emotional distress fails to satisfy the threshold showing of "extreme and outrageous conduct" by the defendant which "intentionally or recklessly causes severe emotional distress to another." *See* RESTATEMENT (SECOND) OF TORTS § 46 (1965). This standard requires that the conduct complained of be "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized society." *Id.* at cmts. d, j; *see also Moolenaar v. Atlas Motor Inns, Inc.*, 616 F.2d 87, 89 (3d Cir. 1980). Such a showing has not been found from financial hardships resulting from actions arising in the employment context, which may be analogous to the instant case. *See Cox v. Keystone Carbon Co.*, 861 F. 2d 390, 395 (3d Cir. 1988). The facts here, arising from what amounts to a pay dispute, simply do not rise to the level of outrageous conduct contemplated for a claim of intentional infliction of emotional distress, particularly where the obligation to pay remains unclear.

Plaintiff's claim for negligent infliction of emotional distress must also fail. That claim requires the plaintiff to plead facts that tend to show the defendant acted negligently, creating an

unreasonable risk which resulted in bodily harm. See RESTATEMENT (SECOND) OF TORTS § 436A (emphasis added); *Seafarer's Int'l Union of N. America v. Thomas*, 40 V.I. 218, 42 F. Supp. 2d 547 (D.V.I. App. Div. 1999) (citations omitted). Mere emotional disturbance such as "temporary freight, nervous shock, nausea, grief, rage and humiliation," absent a showing of bodily harm, does not establish a cognizable claim for negligent infliction of emotional distress. RESTATEMENT (SECOND) OF TORTS § 436A cmts. a, c (1965); see also *Matczak v. Frankford Candy & Chocolate Co.*, 136 F. 3d 933 (3d Cir. 1997). Here, Plaintiff has alleged emotional disturbance resulting from his inability to care for his son during his incarceration, as a result of the defendants' alleged conduct. He has not, however, pled facts tending to show he was physically harmed. See RESTATEMENT (SECOND) OF TORTS § 436A cmt. c; See *Walters v. Mintec/Int'l*, 758 F. 2d 73 (3d Cir. 1985). Plaintiff's claim also fails to show that the alleged conduct presented an unreasonable risk of bodily harm and, indeed, caused bodily harm. See RESTATEMENT (SECOND) OF TORTS § 291, 293 (defining what constitutes an "unreasonable" risk of physical danger); RESTATEMENT (SECOND) OF TORTS § 436 A cmt. a; see also *Lempert v. Singer*, 26 V.I. 326, 344-45 (D.V.I. 1991) (noting that the risks contemplated by the Restatement are those which pose a threat of actual physical danger); see also *Hawley v. Dresser Indus., Inc.*, 737 F. Supp. 445, 470-71 (S.D. Ohio 1990) (holding that a negligent emotional distress claim is inappropriate in the employment context).

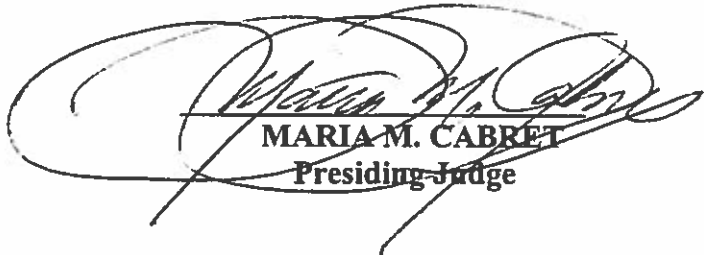
For the reasons stated, the plaintiff fails to state a claim of intentional or negligent infliction of emotional distress, and those claims will be dismissed as to all parties.

CONCLUSION

The plaintiff has not established violations of Constitutional or federal rights, or a conspiracy to violate such rights. Therefore, his complaint, brought pursuant to Title 42, Sections 1983, 1985 and 1986, fails to state a claim for which relief is available against the individual defendants. Moreover, his complaint also fails to state a cognizable claim against the Government of the Virgin Islands, because the territory is not a "person" who may be sued under Sections 1983, 1985 and 1986. Finally, the plaintiff's claim fails to state a prima facie claim of intentional and negligent infliction of emotional distress, based on the standards set forth in the

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Restatement and case law. Accordingly, the, plaintiff's complaint will be dismissed. An appropriate order follows.


MARIA M. CABRET
Presiding Judge

ATTEST:

DENISE D. ABRAMSEN
Clerk of the Court

By 
Deputy Clerk

Dated: 2/25/02