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7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF WASHINGTON
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10 RODNEY L. GARROTT,
11 Plaintiff,
12 v.
13 KEVIN BOWEN, et al.,
14 Defendants.
15

CV-11-0133-SAB

**ORDER GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

16 Before the Court is Defendant's Motion for Summary Judgment, ECF No.
17 79. The motion was heard without oral argument.

18 Plaintiff Rodney Garrott is a Washington State inmate currently detained in
19 the Coyote Ridge Corrections Center. In 2011, plaintiff filed a civil rights action
20 against several state prison officials and employees, alleging that they violated his
21 constitutional rights by transferring him from the McNeil Island Corrections
22 Center (MICC) to the Coyote Ridge Corrections Center (CRCC) in retaliation for
23 his litigation in another matter. Additionally, plaintiff alleges his rights were
24 violated by denial of access to his legal files and the law library at CRCC, and by
25 failing to timely forward mail to the Airway Heights Corrections Center (AHCC)
26 that had been sent to him at CRCC by the Ninth Circuit Court of Appeals.
27 Plaintiff's claims are based on 42 U.S.C. § 1983. Defendant now moves for
28 summary judgment.

**ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY
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1 **MOTION STANDARD**

2 Summary judgment is appropriate if the “pleadings, depositions, answers to
3 interrogatories, and admissions on file, together with the affidavits, if any,” show
4 there is no genuine issue as to any material fact and the moving party is entitled to
5 judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986);
6 Fed. R. Civ. P. 56(c). There is no genuine issue for trial unless there is sufficient
7 evidence favoring the nonmoving party for a jury to return a verdict in that party’s
8 favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). The moving
9 party has the initial burden of showing the absence of a genuine issue of fact for
10 trial. *Celotex*, 477 U.S. at 325. If the moving party meets its initial burden, the
11 non-moving party must go beyond the pleadings and “set forth specific facts
12 showing that there is a genuine issue for trial.” *Id.* at 324; *Anderson*, 477 U.S. at
13 250.

14 In addition to showing there are no questions of material fact, the moving
15 party must also show it is entitled to judgment as a matter of law. *Smith v. Univ. of*
16 *Wash. Law School*, 233 F.3d 1188, 1193 (9th Cir. 2000). The moving party is
17 entitled to judgment as a matter of law when the non-moving party fails to make a
18 sufficient showing on an essential element of a claim on which the nonmoving
19 party has the burden of proof. *Celotex*, 477 U.S. at 323. The non-moving party
20 cannot rely on conclusory allegations alone to create an issue of material fact.
21 *Hansen v. United States*, 7 F.3d 137, 138 (9th Cir. 1993). Further, a plaintiff
22 cannot rest upon the allegations in his complaint, but must establish each element
23 of his claim with “significant probative evidence tending to support the
24 complaint.” *T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass’n*, 809 F.2d
25 626, 630 (9th Cir. 1987).

26 When considering a motion for summary judgment, a court may neither
27 weigh the evidence nor assess credibility; instead, “the evidence of the non-
28 movant is to be believed, and all justifiable inferences are to be drawn in his

1 favor.” *Anderson*, 477 U.S. at 255. To defeat a motion for summary judgment, per
2 Rule 56(c), the non-moving party must “do more than simply show that there is
3 some metaphysical doubt as to the material facts.... In the language of the Rule, the
4 non-moving party must come forward with ‘specific facts showing that there is a
5 genuine issue for trial.’ ” *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*,
6 475 U.S. 574, 586–87 (1986). However, the mere existence of some evidence in
7 support of the non-moving party will not be sufficient to support a denial of a
8 motion for summary judgment; there must be enough evidence to enable a jury
9 reasonably to find for the non-moving party on that issue. *Anderson v. Liberty*
10 *Lobby, Inc.*, 477 U.S. 242, 249 (1986). Thus, if the evidence is “merely colorable,
11 or is not significantly probative,” summary judgment may be granted. *Id.*

12 **FACTS**

13 For purposes of defendant’s Motion for Summary Judgment, the facts are
14 presented in the light most favorable to plaintiff, the non-moving party.

15 Defendants Kevin Bowen, Renee Chun Fook, Jason Noah, Randy Smith,
16 and Cynthia Meade are current and former employees of the Washington State
17 Department of Corrections. Plaintiff Rodney Garrott is a Washington State inmate
18 in the custody of the Washington State Department of Corrections. In February
19 2010 he was an inmate at McNeil Island Corrections Center (MICC) and was
20 transferred to the Coyote Ridge Corrections Center (CRCC) in Connell,
21 Washington.

22 Soon after his transfer from MICC to CRCC, plaintiff contacted his
23 counselor at CRCC, defendant Jason Noah. Plaintiff raised concerns about his
24 transfer to CRCC, his access to legal property, and his access to the prison law
25 library. Defendant Noah provided plaintiff with information to contact the
26 departments at CRCC that could resolve his property and law library access issues.
27 Defendant Noah’s duties as a counselor did not include responsibility for issuing
28 inmate property or for scheduling inmates for law library access.

1 On February 8 or 9, 2010, defendant Noah received a call at CRCC from
2 plaintiff's attorney, Mr. Evan Oshan, requesting to speak to plaintiff regarding
3 some pending litigation and for assistance from defendant Noah in getting a
4 declaration from plaintiff to Mr. Oshan that day or the next day. Defendant Noah
5 arranged for a call between attorney Oshan and plaintiff and he then faxed
6 plaintiff's declaration to Mr. Oshan on the day of the call or the next day. Attorney
7 Oshan was appointed to represent plaintiff in April 2009.

8 On April 18, 2010, the District Court in *Garrott v. LeFrancis* dismissed
9 plaintiff's action for failure to exhaust administrative remedies. Plaintiff appealed
10 to the Ninth Circuit, and the Ninth Circuit issued an Order on April 21, 2010,
11 requiring plaintiff to complete an in forma pauperis authorization form and file it
12 with the court within 21 days. Plaintiff did not timely file the authorization form
13 requested by the Ninth Circuit and his appeal was dismissed by Order dated May
14 24, 2010. The Ninth Circuit reinstated plaintiff's appeal in *Garrott v. LeFrancis* on
15 January 26, 2012. Ultimately, the Ninth Circuit affirmed the dismissal of
16 plaintiff's appeal on the grounds of failure to exhaust administrative remedies.

17 Defendant Bowen is not familiar with plaintiff and did not screen, approve,
18 or finalize the transfer of plaintiff to CRCC in February 2010. Defendant Chun
19 Fook is also not familiar with plaintiff and did not make the decision to transfer
20 plaintiff to CRCC. She does not have the authority to transfer an inmate to another
21 institution or order an inmate to be transferred to another institution.

22 Defendant Smith was the CRCC Mailroom Sergeant in 2010 and his job
23 duties were to supervise mailroom staff and operations. According to mailroom
24 records regarding the receipt of incoming mail, plaintiff received legal mail from
25 the Ninth Circuit on April 12, 2010, which was received and electronically logged
26 into the mail system. According to official CRCC records, the document was
27 delivered to plaintiff in the segregation unit on the same day it was received.
28 Plaintiff transferred to Airway Heights Corrections Center on April 13, 2010. It is

1 both DOC policy and the CRCC mailroom practice to forward inmates' legal mail
2 as soon as possible after it is received. Defendant Smith does not recall being
3 personally involved in forwarding any of plaintiff's mail to him after he
4 transferred to AHCC in April 2010, and CRCC's official mail records do not show
5 that plaintiff received any legal mail at CRCC from the Ninth Circuit after April
6 12, 2010. Defendant Smith has never intentionally delayed forwarding any
7 inmate's legal mail.

8 Defendant Meade processes all outgoing and incoming mail on a daily basis
9 at CRCC and is not familiar with plaintiff. On April 12, 2010, plaintiff received
10 legal mail from the Ninth Circuit which was received and electronically logged
11 into the Pitney Bowed Arrival program at CRCC. According to CRCC records, the
12 document was delivered to plaintiff in the segregation unit on the same day it was
13 received. Defendant Meade does not recall being personally involved in
14 forwarding any of plaintiff's mail to him after he transferred to AHCC in April
15 2010, and CRCC's official mail records do not show that plaintiff received any
16 mail at CRCC from the Ninth Circuit after April 12, 2010.

17 LEGAL ANALYSIS

18 **1. First Amendment Claims**

19 **a. Retaliation**

20 Plaintiff argues that his February 2010 transfer to CRCC violated his First
21 Amendment rights because the transfer was retaliatory and denied him access to
22 the courts. Defendants argue plaintiff's First Amendment claims should be
23 dismissed because: 1) the defendants in this case were not responsible for
24 plaintiff's transfer to CRCC; 2) the decision to transfer plaintiff to CRCC was
25 made only for legitimate penological reasons; and 3) the transfer did not violate
26 plaintiff's rights of access to courts as plaintiff was represented by counsel in a
27 pending federal case and such case was dismissed on its merits for reasons not
28 related to plaintiff's transfer to CRCC.

1 To establish a claim of retaliation, a prisoner must demonstrate that (1) the
2 type of activity engaged in was constitutionally protected, and (2) the state
3 impermissibly infringed upon the right to engage in the protected activity. *Rizzo v.*
4 *Dawson*, 778 F.2d 527, 531 (9th Cir. 1985). As to the second element, the Ninth
5 Circuit standard requires a prisoner to demonstrate that the prison authorities'
6 retaliatory action did not reasonably advance legitimate goals of the correctional
7 facility. *Id.* at 532; *Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005).
8 Further, in order to maintain an action against an individual in a 42 U.S.C. § 1983
9 claim, the plaintiff must affirmatively produce evidence that the named defendant
10 personally participated in a constitutional deprivation. *King v. Atiyeh*, 814 F.2d
11 565 (9th Cir. 1987); *Tribble v. Gardner*, 860 F.2d 321, 327 (9th Cir. 1998).

12 In this case, there is no evidence that any of the named defendants caused
13 plaintiff to be transferred from MICC to CRCC in February 2010. Further, there is
14 no evidence that DOC officials transferred plaintiff from MICC to CRCC because
15 he had engaged in constitutionally protected activity. MICC was downsizing in
16 early 2010 and CRCC was opening new housing units that needed to be filled. A
17 transfer for this purpose is a legitimate penological objective. Plaintiff did not
18 have a right to be housed in a particular prison and could be transferred for any
19 legitimate reason. *Olim v. Wakinekona*, 461 U.S. 238 (1983); *Meachum v. Fano*,
20 427 U.S. 215 (1976); *Montanye v. Haymes*, 427 U.S. 236 (1976); *Personal*
21 *Restraint Petition of Mattenson*, 142 Wn.2d 298 (2000). Since there is no evidence
22 or genuine issue of material fact as to whether plaintiff was transferred in
23 retaliation for exercising constitutional rights, his retaliation claim is denied as a
24 matter of law.

25 **b. Denial of Access to Courts**

26 Plaintiff alleges that he was denied access to his legal files and the law
27 library at CRCC. He also alleges that mail sent to him at CRCC from the Ninth
28 Circuit Court of Appeals was not timely forwarded to him at AHCC.

1 To establish a violation of the First Amendment right of access to the courts,
2 a prisoner must establish that he or she has suffered an actual injury. *Lewis v.*
3 *Casey*, 518 U.S. 343, 349 (1996). To assert an access to the courts claim, the
4 plaintiff must possess a non-frivolous, arguable underlying cause of action, the
5 presentation of which was prevented by the defendant. *See Barbour v. Haley*, 471
6 F.3d 1222, 1226 (11th Cir.2006).

7 In this case, plaintiff has failed to allege an actual injury. His ability to
8 litigate his 2007 federal civil action in another court was not impermissibly
9 burdened by his prison transfer. In fact, plaintiff was represented by counsel at that
10 time and defendant Noah took steps to assist plaintiff and his counsel in litigating
11 plaintiff's active pending case. Plaintiff fails to demonstrate how his transfer to
12 CRCC caused him any actual denial of access to courts or actual injury. Plaintiff's
13 pending civil case was dismissed on its merits and not due to interference by any
14 defendants. Further, there is no evidence that any mail delivery delay alleged by
15 plaintiff caused actual injury as plaintiff's Ninth Circuit appeal was reinstated and
16 eventually denied on its merits. Because there is insufficient evidence from which
17 a reasonable jury could find in favor of plaintiff, summary judgment is
18 appropriate.

19 **2. Qualified Immunity**

20 Defendants argue they are all entitled to qualified immunity from plaintiff's
21 damage claims. As discussed above, defendants assert that plaintiff did not have a
22 clearly established constitutional right to remain at MICC simply because he had a
23 civil lawsuit pending in federal court, and that plaintiff did not have a clearly
24 established constitutional right to greater access to his legal files and the CRCC
25 law library than the access normally provided to other inmates who were recently
26 transferred there. Finally, defendants argue that plaintiff did not have a clearly
27 established constitutional right to have his legal mail promptly forwarded to him
28 by prison officials.

1 Under the doctrine of qualified immunity, officials are “shielded from
2 liability for civil damages insofar as their conduct does not violate clearly
3 established statutory or constitutional rights of which a reasonable person would
4 have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). A trial court
5 confronted with an assertion of qualified immunity should first determine whether
6 the plaintiff has properly asserted a constitutional violation. *Saucier v. Katz*, 533
7 U.S. 194, 200 (2001); *Siegert v. Gilley*, 500 U.S. 226, 232 (1991). It is the plaintiff
8 who bears the burden of proving that the specific right claimed was clearly
9 established at the time of the alleged misconduct. *Davis v. Scherer*, 468 U.S. 183
10 (1984). Until this burden is met, the defendants are presumed to be immune from
11 suit and entitled to dismissal. *American Civil Liberties Union of Maryland, Inc. v.*
12 *Wicomico County, Md.*, 999 F.2d 780, 785 (4th Cir. 1993). “If no constitutional
13 right would have been violated were the allegations established, there is no
14 necessity for further inquiries concerning qualified immunity.” *Saucier*, 533 U.S.
15 at 201.

16 Here, plaintiff has failed to meet his burden of proving a proper
17 constitutional violation established at the time of his prison transfer. Plaintiff did
18 not have a constitutional right to remain in MICC and not be transferred to CRCC.
19 As such, the defendants are entitled to qualified immunity and are presumed to be
20 immune from suit.

21 Accordingly, **IT IS HEREBY ORDERED:**

22 1. Defendant’s Motion for Summary Judgment, ECF No. 79, is
23 **GRANTED.**

24 2. The District Court Executive is directed to enter judgment in favor of
25 defendant and against plaintiff.

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**ORDER GRANTING DEFENDANT’S MOTION FOR SUMMARY
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1 **IT IS SO ORDERED.** The District Court Executive is hereby directed to
2 file this Order, provide copies to counsel and plaintiff, and close the file.

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4 **DATED** this 19th day of August, 2014.



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A handwritten signature in black ink, reading "Stanley A. Bastian".

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 STANLEY A. BASTIAN
 United States District Judge