

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

RAYMOND SETZKE

PLAINTIFF

v.

Civil No. 07-5186

LARRY NORRIS, Director, Arkansas Department of Correction; JOHN MAPLES, Warden of the Grimes Unit, Arkansas Department of Correction; LINDA GATES, Records Supervisor, Grimes Unit; CHARLES PRUITT, Director of the Arkansas Crime Information Center (ACIC); PAULA STITZ, Manager, State Sex Offender Registry of the ACIC; SHERIFF KEITH FERGUSON, Benton County, Arkansas; DEPUTY FREE; DEPUTY JENSEN; CAPTAIN PETRAY; LT. CARTER; MARK BERNTHAL; LEANNE BAKER; AREA MANAGER OR SUPERVISOR at the Area 1 Bentonville Office of the Department of Community Corrections

DEFENDANTS

ORDER

Now on this 17th day of March, 2009, comes on for consideration the **Report and Recommendation** (R&R) issued by the Honorable James Marschewski, United States Magistrate Judge for the Western District of Arkansas (Doc. #149) concerning the following motions:

- * plaintiff's motions for summary judgment (Doc. #36, #66 and #98 -- hereinafter called "Plaintiff's Motions");
- * the motion for summary judgment filed by the Area Manager or Supervisor, Leanne Baker, Mark Bernthal, Charles Pruitt, and Paula Stitz (Doc. #74 -- hereinafter called "Defendants' #74 Motion"); and
- * the motion for summary judgment filed by Grimes

Unit Records Supervisor Linda Gates, Grimes Unit Warden John Maples, and Arkansas Department of Correction Director Larry Norris (Doc. #95 -- hereinafter called "Defendants' #95 Motion")

and the Court, being well and sufficiently advised, finds and orders as follows with respect to the same:

1. Plaintiff filed objections (Doc. #150) to the R&R; ADC and the State Defendants also filed objections (Doc #152) to the R&R; and plaintiff filed a Reply to Defendants' Objection (Doc. #160) to the R&R.

2. The Court, having considered the R&R and the filings of the parties, finds and orders as follows:

(a) Recommendations concerning **Plaintiff's Motion** -- The Magistrate Judge recommended in the R&R that **Plaintiff's Motions** should be **granted in part, and denied in part.**

After review, the Court finds that defendants' objections to these recommendations should be, and they hereby are, overruled. Accordingly, **Plaintiffs' Motions** should be, and they hereby are:

* **granted** as to his due process claim -- in that the Court concludes that plaintiff's right to procedural due process was violated when he was placed on the Arkansas Sex Offender Registry without being afforded an opportunity to contest the Act's application to his 1981 conviction in Illinois; and

* **denied** in all other respects.

(b) Recommendations concerning Defendants' #74 Motion -- The Magistrate Judge recommended in the R&R that the motion for summary judgment filed by the Area Manager or Supervisor, Leanne Baker, Mark Bernthal, Charles Pruitt, and Paula Stitz - **Defendants' #74 Motion** -- should be **denied in part, and granted in part.**

After review, the Court finds that plaintiff's objections to these recommendations should be, and they hereby are, overruled. Accordingly, **Defendants' #74 Motion** should be, and it hereby is:

* **granted** with respect to plaintiff's claims that his rights to substantive due process, equal protection, double jeopardy and his rights under the *Ex Post Facto Clause* were violated; and

* **denied** with respect to plaintiff's claim that his right to procedural due process was violated.

(c) Recommendations concerning Defendants' #95 Motion -- The Magistrate Judge recommended in the R&R that the motion for summary judgment (**Doc. 95**) filed by Grimes Unit Records Supervisor Linda Gates, Grimes Unit Warden John Maples, and Arkansas Department of Correction Director Larry Norris -- the **Defendants' #95 Motion** -- should be **granted in part and denied in part.**

After review, the Court finds that plaintiff's objections to these recommendations should be, and they hereby are, overruled.

Accordingly, **Defendants' #95 Motion** should be, and it hereby is:

- * **granted** with respect to plaintiff's claims for monetary damages against these defendants in their official capacities -- such damages are barred by the doctrine of sovereign immunity under the Eleventh Amendment; and
- * **granted** with respect to plaintiff's claims that his rights to substantive due process, equal protection, double jeopardy and his rights under the *Ex Post Facto Clause* were violated; and
- * **denied** in all other respects.

3. This matter is referred back to Magistrate Judge Marschewski for further action as may be necessary in light of the foregoing.

IT IS SO ORDERED.

 /s/ Jimm Larry Hendren
JIMM LARRY HENDREN
UNITED STATES DISTRICT JUDGE