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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

ROBERT MITCHELL,) SA CV 00-733 AHS (RZx)
)
Plaintiff,)
)
v.) STATEMENT OF UNCONTROVERTED
) FACTS AND CONCLUSIONS OF LAW
COUNTY OF ORANGE, et al.,) IN SUPPORT OF PARTIAL SUMMARY
) JUDGMENT FOR DEFENDANTS
)
Defendants.)
)
_____)

UNCONTROVERTED FACTS

1. Plaintiff filed suit against the County of Orange and several individual Sheriff's Deputies¹ on July 27, 2000.

(See Dkt. No. 1.)

2. The altercation between plaintiff and his cell-mate, Stanley Holmes, took place on April 8, 2000. (Third Am. Compl. ¶ 16.)

_____ ¹ Individually-named Sheriff's Deputies Gene Hyatt, James Porras, Josh Michael Baugh, David Pavlu, Brian Stockbridge, C. Corvoiser, and Paige Demarest referred to collectively herein as "Deputy Defendants." All defendants referred to collectively herein as "defendants."

1 3. Plaintiff was transferred from the IRC to state
2 prison on July 26, 2000. (Decl. of Roland Chacon ("Chacon
3 Decl.") ¶ 3.)

4 4. On September 23, 2003, plaintiff filed his First
5 Amended Complaint ("FAC"). (See Dkt. No. 67.)

6 5. On November 27, 2006, Plaintiff filed his Second
7 Amended Complaint. (See Dkt. No. 200.)

8 6. Plaintiff filed his operative Third Amended
9 Complaint on January 18, 2007. (See Dkt. No. 204.) Trial is
10 currently set for May 12, 2009. (Feb. 17, 2009, Ord. at 2.)

11 7. Fact discovery closed seventy-eight (78) calendar
12 days before the trial date, or February 23, 2009. (Nov. 19,
13 2007, Ord. at 3.) Expert discovery closed on November 14, 2008.
14 (Aug. 25, 2008, Ord. at 2.)

15 8. Plaintiff raised for the first time a section 1983
16 claim alleging that defendants violated the Equal Protection
17 Clause by discriminating against plaintiff as the first claim in
18 the First Amended Complaint, filed September 23, 2003. (FAC ¶¶
19 90-92.)

20 9. The classification of inmates is a specialized
21 task conducted by specially-trained deputies whose sole
22 responsibility is to properly classify inmates. (Chacon Decl. ¶
23 4.) Deputies that monitor and patrol the modules inside the IRC,
24 such as the Deputy Defendants, take no part in the classification
25 of inmates. (Chacon Decl. ¶ 5.) Deputy Defendants took no part
26 in the classification of plaintiff. (Chacon Decl. ¶ 7.)

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1 CONCLUSIONS OF LAW

2 1. Summary judgment is proper when the "pleadings,
3 the discovery and disclosure materials on file, and any
4 affidavits" demonstrate "that there is no genuine issue as to any
5 material fact and that the movant is entitled to judgment as a
6 matter of law." Fed. R. Civ. P. 56(c). The moving party "always
7 bears the initial responsibility of informing the district court
8 of the basis for its motion, and identifying those portions of
9 [the evidence] which it believes demonstrate the absence of a
10 genuine issue of material fact." Celotex Corp. v. Catrett, 477
11 U.S. 317, 323, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). Once
12 the summary judgment proponent has discharged its initial burden,
13 the nonmoving party must "go beyond the pleadings and by her own
14 affidavits, or by [other evidence], designate 'specific facts
15 showing that there is a genuine issue for trial.'" Id. at 324
16 (quoting then-current Fed. R. Civ. P. 56(e)). In making its
17 determination, the Court views all inferences drawn from the
18 underlying facts in the light most favorable to the nonmoving
19 party. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475
20 U.S. 574, 587, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986).

21 2. The applicable statute of limitations for a claim
22 brought under 42 U.S.C. § 1983 is the personal injury statute of
23 limitations in the forum state. Guerrero v. Gates, 442 F.3d 697,
24 705 n.32 (9th Cir. 2006). California extended its personal
25 injury statute of limitations from one to two years on January 1,
26 2003. Wade v. Ratella, 407 F. Supp. 2d 1196, 1203 (S.D. Cal.
27 2005). The extension applies retroactively to claims made by
28 victims of the terrorist attacks of September 11, 2001, but other

1 claims already barred by the prior statute of limitations do not
2 benefit from the extension. Id.

3 3. California law also permits equitable tolling for
4 prisoners seeking relief under section 1983. See Guerrero, 442
5 F.3d at 705-06 (applying California's tolling statute to
6 prisoner's section 1983 claim). California Code of Civil
7 Procedure § 352.1 tolls the statute of limitations for a maximum
8 of two years if the plaintiff is incarcerated for a term less
9 than life. Wade, 407 F. Supp. 2d at 1204-05.

10 4. Under federal law, a civil rights claim begins to
11 accrue when the plaintiff knows or has reason to know of the
12 injury forming the basis of the action. Id. at 1203.

13 5. The statute of limitations is an affirmative
14 defense under Rule 8(c)(1) of the Federal Rules of Civil
15 Procedure. "[A]n affirmative defense [is] ordinarily lost if not
16 timely raised." Arizona v. California, 530 U.S. 392, 410, 120 S.
17 Ct. 2304, 147 L. Ed. 2d 374 (2000). "In the absence of a showing
18 of prejudice, however, an affirmative defense may be raised for
19 the first time at summary judgment." Camarillo v. McCarthy, 998
20 F.2d 638, 639 (9th Cir. 1993).

21 6. Plaintiff's first claim is not barred by the
22 statute of limitations because plaintiff benefits from equitable
23 tolling and the 2003 extension and because defendants waived this
24 affirmative defense by raising it for the first time at summary
25 judgment.

26 7. Plaintiff's claim under section 1983 and the
27 Fourteenth Amendment accrued on the date of the altercation with
28 Mr. Holmes. At that point, April 8, 2000, plaintiff knew or

1 should have known that he suffered injury as a result of
2 defendants' alleged race-based policies and practices. As a
3 prisoner with a forthcoming section 1983 claim, plaintiff
4 qualified for equitable tolling lasting a maximum of two years
5 under California Code of Civil Procedure § 352.1. When this
6 tolling expired on April 8, 2002, the one-year statute of
7 limitations began to run. However, before its expiration, the
8 California legislature extended the period from one to two years.
9 Because plaintiff's claim was not yet time-barred when the
10 extension was passed, the new two-year period applies.
11 Accordingly, the statute of limitations on plaintiff's section
12 1983 claim expired on April 8, 2004, after plaintiff filed his
13 First Amended Complaint on September 23, 2003. See Lamke v.
14 Sunstate Equip. Co., 387 F. Supp. 2d 1044, 1052 (N.D. Cal. 2004).
15 Plaintiff's first claim is timely.

16 8. Defendants waived the statute of limitations as an
17 affirmative defense by raising it for the first time in the
18 instant motion. Plaintiff would be prejudiced if defendants were
19 permitted to raise the statute of limitations defense for the
20 first time at summary judgment. Fact and expert discovery are
21 closed. Both parties appear to have spent substantial time and
22 resources investigating plaintiff's Equal Protection allegations
23 under the assumption that this claim was viable. Thus,
24 defendants waived their statute of limitations defense by raising
25 it for the first time at the summary judgment stage.

26 9. For the above reasons, defendants are not entitled
27 to summary judgment on their statute of limitations defense and
28 the motion is denied to the extent it seeks relief on those

1 grounds.

2 10. To establish standing, a plaintiff must state a
3 claim for injuries to his or her own rights; the Court will not
4 decide "'abstract questions of wide public significance'" or
5 generalized grievances. Elk Grove Unified Sch. Dist. v. Newdow,
6 542 U.S. 1, 12, 124 S. Ct. 2301, 159 L. Ed. 2d 98 (2004) (quoting
7 Warth v. Seldin, 422 U.S. 490, 500, 95 S. Ct. 2197, 45 L. Ed. 2d
8 343 (1975)). An actual controversy must exist throughout the
9 litigation. See U.S. Parole Comm'n v. Geraghty, 445 U.S. 388,
10 395-96, 100 S. Ct. 1202, 63 L. Ed. 2d 479 (1980). A claim is
11 moot when it is no longer live or the parties lack an interest in
12 the outcome. Id. at 396.

13 11. An exception to the mootness doctrine is available
14 in "cases that are 'capable of repetition, yet evading review.'" Murphy v. Hunt,
15 455 U.S. 478, 482, 102 S. Ct. 1181, 71 L. Ed. 2d
16 353 (1982). To fall under this exception, the claim or issue:
17 (1) must be of such inherently short duration that adjudication
18 cannot be achieved before it expires; and (2) there must be a
19 "reasonable probability" that plaintiff will be subjected to the
20 same alleged harm again. Id. (citation and internal quotations
21 omitted). A "mere physical or metaphysical possibility" that
22 plaintiff will again be subjected to the same alleged harm is
23 insufficient to establish a "reasonable probability" of
24 repetition. Id.

25 12. "An inmate's release from prison while his claims
26 are pending generally will moot any claims for injunctive relief
27 relating to the prison's policies unless the suit has been
28 certified as a class action." Dilley v. Gunn, 64 F.3d 1365, 1368

1 (9th Cir. 1995). The same rule applies if the plaintiff is
2 transferred, rather than released, from the prison against which
3 he seeks injunctive relief. Moreno v. Thomas, 490 F. Supp. 2d
4 1055, 1060 (C.D. Cal. 2007). Thus, an inmate cannot obtain
5 injunctive relief against a facility in which he is no longer
6 confined. See, e.g., Nelson v. Heiss, 271 F.3d 891, 897 (9th
7 Cir. 2001); Moreno, 490 F. Supp. 2d at 1060 (C.D. Cal. 2007);
8 Lucero v. Hensley, 920 F. Supp. 1067, 1077 (C.D. Cal. 1996).

9 13. It is undisputed that plaintiff was transferred
10 from the IRC on July 26, 2000. Unless the alleged wrong is
11 "capable of repetition, yet evading review," plaintiff's claims
12 are moot to the extent he seeks injunctive relief. Plaintiff,
13 however, fails to show a "reasonable probability" of repetition
14 sufficient to invoke the exception. Plaintiff's "[s]peculative
15 fear that an alleged wrong may reoccur will not allow the [Court]
16 to invoke the capable-of-repetition doctrine as an exception to
17 the mootness doctrine." Lucero, 920 F. Supp. at 1077.

18 Plaintiff's first claim is moot to the extent it seeks injunctive
19 relief.

20 14. In finding that plaintiff fails to show that he
21 has standing to seek injunctive relief against the County of
22 Orange, defendants' Motion for Partial Summary Judgment to
23 dismiss plaintiff's first claim to the extent it seeks injunctive
24 relief is granted.

25 15. Government officials are entitled to qualified
26 immunity from civil damages unless their conduct violates
27 "clearly established statutory or constitutional rights of which
28 a reasonable person would have known." Harlow v. Fitzgerald, 457

1 U.S. 800, 818, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982). A
2 right is clearly established if "it would be clear to a
3 reasonable officer that his conduct was unlawful in the situation
4 he confronted." Saucier v. Katz, 533 U.S. 194, 202, 121 S. Ct.
5 2151, 150 L. Ed. 2d 272 (2001), overruled in part, Pearson v.
6 Callahan, ---U.S.---, 129 S. Ct. 808, 818 (2009) (holding two-
7 step procedure for deciding questions of qualified immunity no
8 longer mandatory). General propositions are not enough; rather,
9 the particular contours of the right must be clear to a
10 reasonable officer. Id.

11 16. The record reveals that Deputy Defendants did not
12 violate a "clearly established" Equal Protection right of
13 plaintiff's by virtue of their actions in 2000. In 2000, race-
14 based segregation in prisons passed constitutional muster if it
15 was reasonably related to legitimate penological interests.
16 Mayweathers v. Hickman, No. 05-CV-713 WQH (CAB), 2006 WL 4395859,
17 at *6 (S.D. Cal. Dec. 26, 2006). It was not until the decision
18 in Johnson v. California, 543 U.S. 499, 509, 515, 125 S. Ct.
19 1141, 160 L. Ed. 2d 949 (2005), that the Supreme Court clarified
20 that all governmental racial classifications - in and outside of
21 prison - are required to meet strict scrutiny. Because the
22 "contours of the right . . . [were] undefined" at the time the
23 alleged misconduct occurred, the Deputy Defendants are entitled
24 to qualified immunity from plaintiff's First Cause of Action
25 under the Fourteenth Amendment. See Martinez v. Covello, No. CV
26 06-3891 CJC (MAN), 2008 WL 4552903, at *16-17 (C.D. Cal. Oct. 7,
27 2008).

28 17. In finding that plaintiff fails to show that

1 Deputy Defendants violated a clearly established Fourteenth
2 Amendment right, defendants' Motion for Partial Summary Judgment
3 to dismiss Deputy Defendants from plaintiff's first claim is
4 granted.

5 18. For the foregoing reasons, defendants, County of
6 Orange, a political subdivision of the State of California;
7 Michael Carona, Sheriff for the County of Orange; John Rocky
8 Hewitt, Assistant Sheriff for the County of Orange; Deputy Gene
9 Hyatt; Deputy James Porras; Deputy Josh Michael Baugh; Deputy
10 David Pavlu; Deputy Brian Stockbridge; Deputy C. Corvoiser; and
11 Deputy Paige Demarest are entitled to summary judgment on
12 plaintiff's First Cause of Action to the extent it seeks
13 injunctive relief.

14 19. Deputy Defendants are entitled to summary judgment
15 on plaintiff's first claim on qualified immunity grounds.

16 Dated: March 6, 2009.

17 ALICEMARIE H. STOTLER

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19 ALICEMARIE H. STOTLER
20 UNITED STATES DISTRICT JUDGE
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