

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ORDER ON SUMMARY JUDGMENT

November 16, 2010

DEIN, U.S.M.J.

In accordance with this court's Memorandum of Decision and Order on Michael Bellotti's Motion for Summary Judgment dated December 1, 2009 and this court's Memorandum of Decision and Order on Parties' Motions for Summary Judgment dated September 30, 2010, it is hereby ORDERED as follows:

1. Judgment is hereby entered in favor of the Department of Correction, Harold Clarke, Kenneth Nelson and Michael Bellotti on all Counts asserted against them in the Amended Complaint (Docket No. 52).

2. Declaratory judgment is hereby entered in favor of plaintiff Albert Ford (“Ford”) and against defendants James Bender (“Bender”) and Peter St. Amand (“St. Amand”) on Counts I and II of the Amended Complaint. Specifically, this court finds that defendants Bender and St. Amand, acting in both their individual and official capacities, violated the plaintiff’s substantive due process rights under the United States

Constitution and the Massachusetts Declaration of Rights by confining him in the Department of Correction's Departmental Disciplinary Unit ("DDU") as a pretrial detainee as punishment for misconduct that occurred while Ford was serving a prior sentence.

3. Declaratory judgment is hereby entered in favor of plaintiff Ford and against defendant Bender on Counts III and IV of the Amended Complaint. Specifically, this court finds that defendant Bender, acting in both his individual and official capacities, violated the plaintiff's procedural due process rights under the United States Constitution and the Massachusetts Declaration of Rights by confining Ford in the DDU as a pretrial detainee, based on disciplinary proceedings that occurred while Ford was serving a prior sentence, without affording him a new hearing. This court further finds that defendant Bender, acting only in his official capacity, violated the plaintiff's procedural due process rights under the United States Constitution and the Massachusetts Declaration of Rights by confining Ford in the DDU following his 2008 conviction, without affording him a new hearing. Judgment is hereby entered for defendant St. Amand on Counts III and IV.

4. Judgment is hereby entered in favor of the defendants on the ineffective assistance of counsel claims asserted in Counts V and VI of the Amended Complaint.

5. Judgment is hereby entered in favor of the defendants on the infamous punishment claims asserted in Count IX of the Amended Complaint.

6. Judgment is hereby entered in favor of the defendants on the state statutory claims asserted in Counts X and XI of the Amended Complaint.

7. Further proceedings shall be held to address the equal protection claims set forth in Counts VII and VIII of the Amended Complaint, and to resolve issues regarding the amount of money damages to which Ford is entitled and the nature and extent of any injunctive relief. A jury trial will be held to address such of the remaining issues which are appropriately decided by a jury.

/ s / Judith Gail Dein
Judith Gail Dein
U.S. Magistrate Judge