## UNITED STATES OF AMERICA UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN NORTHERN DIVISION

MICHAEL SOARES SOCORRO,

Plaintiff, Case No. 2:11-cv-130

v. Honorable R. Allan Edgar

MICHIGAN DEPARTMENT OF CORRECTIONS,

Defendant.

## **OPINION**

This is a civil rights action brought by a state prisoner pursuant to 42 U.S.C. § 1983. The Court has granted Plaintiff leave to proceed *in forma pauperis*. Under the Prison Litigation Reform Act, Pub. L. No. 104-134, 110 Stat. 1321 (1996), the Court is required to dismiss any prisoner action brought under federal law if the complaint is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant immune from such relief. 28 U.S.C. §§ 1915(e)(2), 1915A; 42 U.S.C. § 1997e(c). The Court must read Plaintiff's *pro se* complaint indulgently, *see Haines v. Kerner*, 404 U.S. 519, 520 (1972), and accept Plaintiff's allegations as true, unless they are clearly irrational or wholly incredible. *Denton v. Hernandez*, 504 U.S. 25, 33 (1992). Applying these standards, Plaintiff's action will be dismissed because Defendant Michigan Department of Corrections is immune from suit.

## **Factual Allegations**

Plaintiff Michael Soares Socorro presently is incarcerated with the Michigan Department of Corrections (MDOC) and housed at the Carson City Correctional Facility. He sues the MDOC. In his amended complaint, Plaintiff alleges that Defendant MDOC, through its employees, has been deliberately indifferent to his safety and has denied him protective segregation. He also alleges that he was improperly terminated from his prison job, placed on modified grievance access, harassed, and denied medical treatment. He seeks declaratory relief and monetary damages.

## **Discussion**

Plaintiff may not maintain a § 1983 action against the Michigan Department of Corrections. Regardless of the form of relief requested, the states and their departments are immune under the Eleventh Amendment from suit in the federal courts, unless the state has waived immunity or Congress has expressly abrogated Eleventh Amendment immunity by statute. *See Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 98-101 (1984); *Alabama v. Pugh*, 438 U.S. 781, 782 (1978); *O'Hara v. Wigginton*, 24 F.3d 823, 826 (6th Cir. 1993). Congress has not expressly abrogated Eleventh Amendment immunity by statute, *Quern v. Jordan*, 440 U.S. 332, 341 (1979), and the State of Michigan has not consented to civil rights suits in federal court. *Abick v. Michigan*, 803 F.2d 874, 877 (6th Cir. 1986). In numerous unpublished opinions, the Sixth Circuit has specifically held that the MDOC is absolutely immune from suit under the Eleventh Amendment. *See*, *e.g.*, *McCoy v. Michigan*, 369 F. App'x 646, 653-54 (6th Cir. Mar. 12, 2010); *Turnboe v. Stegall*, No. 00-1182, 2000 WL1679478, at \*2 (6th Cir. Nov. 1, 2000). In addition, the State of Michigan (acting through the Michigan Department of Corrections) is not a "person" who may be sued under § 1983 for money damages. *See Lapides v. Bd. of Regents*, 535 U.S. 613 (2002) (citing

Will v. Mich. Dep't of State Police, 491 U.S. 58 (1989)). Therefore, the Court dismisses the

Michigan Department of Corrections.

Conclusion

Having conducted the review now required by the Prison Litigation Reform Act, the

Court determines that Plaintiff's action will be dismissed pursuant to 28 U.S.C. §§ 1915(e)(2) and

1915A(b), and 42 U.S.C. § 1997e(c) because Defendant MDOC is immune from suit.

The Court must next decide whether an appeal of this action would be in good faith

within the meaning of 28 U.S.C. § 1915(a)(3). See McGore v. Wrigglesworth, 114 F.3d 601, 611

(6th Cir. 1997). For the same reasons that the Court dismisses the action, the Court discerns no

good-faith basis for an appeal. Should Plaintiff appeal this decision, the Court will assess the

\$455.00 appellate filing fee pursuant to § 1915(b)(1), see McGore, 114 F.3d at 610-11, unless

Plaintiff is barred from proceeding in forma pauperis, e.g., by the "three-strikes" rule of § 1915(g).

If he is barred, he will be required to pay the \$455.00 appellate filing fee in one lump sum.

This is a dismissal as described by 28 U.S.C. § 1915(g).

A Judgment consistent with this Opinion will be entered.

Dated: \_\_\_\_\_\_\_\_/s/R. Allan Edgar

R. Allan Edgar

United States District Judge

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