

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE**

Timothy M. O'Mara

v.

08-cv-51-SM

Superintendent, Hillsborough County
Department of Corrections, et al.

O R D E R

Pro se plaintiff Timothy M. O'Mara seeks reconsideration (document no. 13)¹ of my report and recommendation (document no. 10), recommending dismissal of certain claims raised in his civil rights action filed pursuant to 42 U.S.C. § 1983. Named as defendants are William Wrenn, Commissioner of the New Hampshire Department of Corrections ("NHDOC"), Toni Pappas, Commissioner of Hillsborough County, the Hillsborough County Department of Corrections ("HCDOC"), and the following HCDOC employees: James M. O'Mara, Jr., Superintendent; Linda Norman, bookkeeper; C. Beaudon, mail agent; and corrections officers D. Dionne, Robbins, Pinciario, Riley, Brown, Granville, W. Raymond, W. Scurry, William McDougall, Tony Sawyer and Menic.

¹I liberally construe O'Mara's request for reconsideration as an objection to my report and recommendation of July 17, 2008.

O'Mara challenges the dismissal of the following claims: (1) Fourteenth Amendment claim arising from the denial of adequate out-of-cell and recreation time; (2) Fourteenth Amendment claim arising from the manner and condition in which he was served food; (3) First and Fourteenth Amendment claims arising from the alleged interference with his mail, legal documents and access to the courts; and (4) Fourth and Fourteenth Amendment claims arising from unreasonable searches and seizures and the deprivation of personal property.


For the reasons stated in the report and recommendation issued simultaneously herewith, I find O'Mara's objection to be meritorious with regard to one claim: the Fourteenth Amendment claim premised upon the denial of out-of-cell and recreation time. Accordingly, I order that claim to be answered by defendants O'Mara and Dionne. With regard to the remaining claims, nothing in O'Mara's motion for reconsideration has altered the analysis set forth in my previous report and recommendation. I therefore recommend that his objection be denied as to the remaining claims.

As I find that O'Mara has stated a claim upon which relief may be granted, I order the claim be answered by defendants O'Mara and Dionne.

Defendants shall answer or otherwise plead within twenty days of service. See Fed. R. Civ. P. 12(a)(1)(A).

Plaintiff is instructed that all future pleadings, written motions, notices, or similar papers shall be served directly on the defendants by delivering or mailing the materials to them or their attorneys, pursuant to Fed. R. Civ. P. 5(b).

SO ORDERED.


James R. Muirhead
United States Magistrate Judge

Date: October 21, 2008

cc: Timothy M. O'Mara, pro se