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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

BILLIE JOHNSON,

Plaintiff,

v.

STATE OF WASHINGTON, MAGGIE
MILLER-STOUT, WENDY STIGALL,
LORRAINE CREVIER, WINIFRED
WILLIAMS, GAIL CLARKE,
CHRISTOPHER FITZPATRICK, JOHN
DOES 1-6, DEPARTMENT OF
CORRECTIONS, JOHN DOE STOUT,
JOHN DOE STIGALL, JOHN DOE
CREVIER, JOHN DOE WILLIAMS,
JANE DOE FITZPATRICK, JOHN DOE
CLARKE,

Defendants.

CASE NO. 14-cv-06012-RJB

ORDER GRANTING IN PART
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

This matter comes before the Court on Defendants' Motion and Memorandum for Summary Judgment and Dismissal. Dkt. 14. The Court has considered the pleadings filed in support of, and opposition to, the motion and the file herein.

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1 Superior Court did not consider this question at the time because the suspended portion of Mr.
2 Fields' SSOSA sentence had not yet been revoked.

3 On November 17, 2004, the Kitsap County Superior Court orally revoked Mr. Fields'
4 suspended SSOSA sentence, under Cause Number 97-1-01054-1, orally sentencing him to serve
5 the 12 months and one day concurrently with his 1998 SSOSA sentence. Dkt. 22, at 18-28.

6 On November 19, 2004, the Kitsap County Superior Court issued an Order Amending
7 Judgment and Sentence, under Cause Number 97-1-01054-1, reflecting that Mr. Fields will no
8 longer be on SSOSA. Dkt. 17, at 37. This order failed to incorporate the Kitsap County Superior
9 Court's oral ruling, dated November 17, 2004, that Mr. Fields' SSOSA sentence be revoked or
10 that the sentences run concurrently. *Id.*

11 On February 9, 2005, the Kitsap County Superior Court issued an Order Revoking
12 SSOSA sentence, revoking Mr. Fields' suspended SSOSA sentence and ordering that Mr. Fields
13 "serve all previously suspended sentence with the [Department of Corrections]." Dkt. 16, at 43.
14 This order also failed to reflect the Kitsap County Superior Court's oral ruling, dated November
15 17, 2004, that Mr. Fields' sentences run concurrently. *Id.*; *See* Dkt. 16, at 49-50.

16 When Mr. Fields began his incarceration on November 23, 2004, the Department of
17 Corrections ("DOC") calculated his sentences as concurrent. Dkt. 22, at 30. *See* Dkt. 14, at 17. In
18 fact, subsequent 2006 and 2009 intake audits show that Mr. Fields' sentences ran concurrently.
19 Dkt. 22, at 32-33. Accordingly, Mr. Fields' maximum expiration date was set as September 29,
20 2012. Dkt. 16, at 4. Although in 2010 Mr. Fields was eligible for community custody at an
21 approved address in lieu of earned release time, he elected to remain in prison until September
22 29, 2012, the maximum expiration date. *Id.*, at 16.

1 In early September 2012, Mr. Fields discovered that the DOC had failed to give him
2 credit for the four months served in the Kitsap County Jail. *See* Dkt. 22, at 40. As a result, on
3 September 12, 2012, Mr. Fields filed a grievance with the DOC, stating that “[his] sentence had
4 been served in its entirety as of May 29, 2012 and that to date [he’s] been imprisoned for 101
5 days beyond the 97 month maximum sentence.” *Id.* That same day, Ms. Lorraine Crevier, a
6 Correctional Records Technician, emailed the Kitsap County Jail, stating that “[Mr. Fields] will
7 be releasing on his max date of 9/29/12” and asking whether “[Mr. Fields] gets any credit at [the
8 Kitsap County Jail] from 1998.” *Id.*, at 15. On September 13, 2012, the Kitsap County Jail
9 confirmed that Mr. Fields had spent time there from May 20, 1998, to August 12, 1998. *Id.*

10 On September 24, 2012, five days before Mr. Fields’ expected maximum expiration date,
11 the DOC acknowledged that it had not previously given him credit for the time served in the
12 Kitsap County Jail. *Id.*, at 40; Dkt. 16, at 47; *See* Dkt. 16, at 5-6 (“The [DOC] records prior to
13 that time did not include that Mr. Fields received 84 credits from Kitsap County Jail for the time
14 he served in 2004”). The DOC did not release Mr. Fields, however. Instead, the DOC informed
15 him that it was recalculating the two sentences as consecutive and that his maximum expiration
16 date would be July 7, 2013. Dkt. 22, at 40.

17 Specifically, Ms. Crevier stated in her declaration that, following *Dress v. Washington*
18 *State Dep’t of Corr.*, 168 Wn. App. 319 (2012), she reviewed Mr. Fields’ “2004 judgment and
19 sentence,” finding “no language [therein] or any other superior court order directing the 2004
20 sentence to run concurrently to his 1998 judgment and sentence.” Dkt. 16, at 4. As a result, she
21 determined that the two sentences should run consecutively. *Id.*, at 5.

22 In addition, Ms. Wendy Stigall, a Correctional Records Program Administrator, stated in
23 her declaration that she “concurred with Ms. Crevier’s reading of Mr. Fields’ 2004 judgment and
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1 sentence as consecutive to his 1998 judgment and sentence because the 2004 judgment and
2 sentence was silent on the issue of whether it was concurrent” and because “reading it as
3 concurrent would require insertion of language that the court did not include in the 2004
4 judgment and sentence or other orders.” Dkt. 15, at 4. Accordingly, Ms. Crevier reset Mr. Fields’
5 maximum expiration date from September 29, 2012, to July 7, 2013. Dkt. 16, at 47.

6 On January 3, 2013, Mr. Fields submitted an offender’s kite to the DOC, stating that the
7 Kitsap County Superior Court had ordered that the two sentences run concurrently. Dkt. 22, at
8 52. On February 8, 2013, the DOC responded as follows: “Kitsap Causes AA & AB were
9 reviewed per Dress decision [and] found at that time to be consecutive causes.” *Id.*

10 On February 21, 2013, Mr. Fields filed a Motion to Modify or Correct Judgment and
11 Sentence with the Kitsap County Superior Court. Dkt. 17, at 9-40. In response, on March 8,
12 2013, the Kitsap County Superior Court entered an Order Amending the Judgment and Sentence
13 and Order Revoking SSOSA Sentence, under Cause Number 97-1-01054-1, to include the
14 following language: “The sentence in this case shall be served concurrently with the sentence
15 ordered in [the 1998 case].” Dkt. 16, at 49-50. The court explained that its Order Revoking
16 SSOSA sentence, dated February 9, 2005, “failed to specifically include language stating that the
17 prison term on the revoked SSOSA sentence was to be served concurrently with the prison term
18 imposed in the drug case.” *Id.*, at 49. Mr. Fields was released on March 15, 2003.

19 Before the present action ensued, Mr. Fields died. Ms. Billie Johnson, Mr. Fields’ estate’s
20 personal representative, is the plaintiff in the present action. Dkt. 4-1.

21 SUMMARY JUDGMENT STANDARD

22 Summary judgment is proper only if the pleadings, the discovery and disclosure materials
23 on file, and any affidavits show that there is no genuine issue as to any material fact and that the
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1 movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The moving party is
2 entitled to judgment as a matter of law when the nonmoving party fails to make a sufficient
3 showing on an essential element of a claim in the case on which the nonmoving party has the
4 burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1985). There is no genuine issue
5 of fact for trial where the record, taken as a whole, could not lead a rational trier of fact to find
6 for the non moving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586
7 (1986) (nonmoving party must present specific, significant probative evidence, not simply “some
8 metaphysical doubt.”). *See also* Fed. R. Civ. P. 56(e). Conversely, a genuine dispute over a
9 material fact exists if there is sufficient evidence supporting the claimed factual dispute,
10 requiring a judge or jury to resolve the differing versions of the truth. *Anderson v. Liberty Lobby,*
11 *Inc.*, 477 .S. 242, 253 (1986); *T.W. Elec. Service Inc. v. Pacific Electrical Contractors*
12 *Association*, 809 F.2d 626, 630 (9th Cir. 1987).

13 The determination of the existence of a material fact is often a close question. The court
14 must consider the substantive evidentiary burden that the nonmoving party must meet at trial –
15 e.g., a preponderance of the evidence in most civil cases. *Anderson*, 477 U.S. at 254, *T.W. Elect.*
16 *Service Inc.*, 809 F.2d at 630. The court must resolve any factual issues of controversy in favor
17 of the nonmoving party only when the facts specifically attested by that party contradict facts
18 specifically attested by the moving party. The nonmoving party may not merely state that it will
19 discredit the moving party’s evidence at trial, in the hopes that evidence can be developed at trial
20 to support the claim. *T.W. Elect. Service Inc.*, 809 F.2d at 630 (relying on *Anderson, supra*).
21 Conclusory, non specific statements in affidavits are not sufficient, and “missing facts” will not
22 be “presumed.” *Lujan v. National Wildlife Federation*, 497 U.S. 871, 888-89 (1990).

1 Where the moving party does not bear the burden of proof on an issue at trial, the moving
2 party may discharge its burden of production by either of two methods:

3 The moving party may produce evidence negating an essential element of the nonmoving
4 party's case, or, after suitable discovery, the moving party may show that the nonmoving
5 party does not have enough evidence of an essential element of its claim or defense to
6 carry its ultimate burden of persuasion at trial.

7 *Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Cos., Inc.*, 210 F.3d 1099, 1106 (9th Cir.2000).

8 If the moving party discharges its burden by showing an absence of evidence to support
9 an essential element of a claim or defense, it is not required to produce evidence showing the
10 absence of a material fact on such issues, or to support its motion with evidence negating the
11 non-moving party's claim. *Id.*; *See also Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 885 (1990);
12 *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir.1991). If the moving party shows an
13 absence of evidence to support the non-moving party's case, the burden then shifts to the non-
14 moving party to produce “specific evidence, through affidavits or admissible discovery material,
15 to show that the dispute exists.” *Bhan*, 929 F.2d at 1409.

16 If the moving party discharges its burden by negating an essential element of the non-
17 moving party's claim or defense, it must produce affirmative evidence of such negation. *Nissan*,
18 210 F.3d at 1105. If the moving party produces such evidence, the burden then shifts to the non-
19 moving party to produce specific evidence to show that a dispute of material fact exists. *Id.*

20 If the moving party does not meet its initial burden of production by either method, the
21 non-moving party is under no obligation to offer any evidence in support of its opposition. *Id.*
22 This is true even though the non-moving party bears the ultimate burden of persuasion at trial. *Id.*
23 at 1107.

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1 a release address, which would have enabled the DOC to release Mr. Fields into community
2 custody after his early release date and before his maximum expiration date. *Id.*

3 In response, plaintiff argues that *Dress* and its sister cases “have made clear, without fail,
4 that the DOC has no authority to correct or change an inmate’s sentence, even where it is
5 perceived to be ‘clearly erroneous’” and that the DOC violated Mr. Fields’ constitutional rights
6 when the DOC so corrected or changed Mr. Fields’ sentencing structure as to confine him past
7 his true maximum expiration date. Dkt. 21.

8 In addition, plaintiff requests that the Court deny defendants’ motion under Fed. R. Civ.
9 P. 56(d)(1). *Id.* Plaintiff argues that a summary judgment at this stage would be premature
10 because the parties have not conducted any discovery, expecting that discovery will reveal,
11 among other things, facts relating to (a) defendants’ specific knowledge and actions; (b) the
12 DOC’s allegedly flawed process for reviewing judgments and sentences; and (c) plaintiff’s
13 claims for deliberate indifference. *Id.*

14 In reply, defendants argue that plaintiff has failed to demonstrate a clearly established
15 federal law supporting plaintiff’s claims. Dkt. 23. Specifically, defendants argue that plaintiff has
16 cited only to state law, which is insufficient under § 1983, for the proposition that the DOC is not
17 allowed to unilaterally modify court orders. *Id.* In addition, defendants cite to *Engebretson v.*
18 *Mahoney*, 724 F.3d 1034 (9th Cir. 2013), for the proposition that prison official have no duty to
19 investigate a court order’s legality. *Id.*

20 Finally, defendants argue that plaintiff is not entitled to a continuance under Fed. R. Civ.
21 P. 56(d) because issues of immunity “depend on law, not on facts supposedly elicited from
22 depositions or written discovery... .” *Id.*

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1 *I. Standard*

2 In a § 1983 action, defendants are entitled to qualified immunity from damages for civil
3 liability as long as their conduct does not violate clearly established statutory or constitutional
4 rights of which a reasonable person would have known. *Harlow v. Fitzgerald*, 457 U.S. 800, 818
5 (1982). In analyzing a qualified immunity defense, the Court must determine: (1) whether a
6 constitutional right would have been violated on the facts alleged, taken in the light most
7 favorable to the party asserting the injury; and (2) whether the right was clearly established when
8 viewed in the specific context of the case. *Saucier v. Katz*, 533 U.S. 194, 201 (2001). “The
9 relevant dispositive inquiry in determining whether a right is clearly established is whether it
10 would be clear to a reasonable [official] that his conduct was unlawful in the situation he
11 confronted.” *Id.*

12 In addition, the privilege of qualified immunity is an immunity from suit rather than a
13 mere defense to liability, and like absolute immunity, it is effectively lost if a case is erroneously
14 permitted to go to trial. *Mueller v. Aufer*, 576 F.3d 979, 992 (9th Cir. 2009) (quoting *Mitchell v.*
15 *Forsyth*, 472 U.S. 511, 526 (1985)). Qualified immunity also protects a defendant from having to
16 bear the burdens of such pretrial matters as discovery. *Behrens v. Pelletier*, 516 U.S. 299, 308
17 (1996). *See also Act Up!/Portland v. Bagley*, 988 F.2d 868, 872-73 (9th Cir. 1993). In analyzing
18 a qualified immunity defense, courts are “permitted to exercise sound discretion in deciding
19 which of the two prongs of the qualified immunity analysis should be addressed first in light of
20 the circumstances in the particular case at hand.” *Pearson v. Callahan*, 555 U.S. 223, 236 (2009).

21 Finally, a plaintiff has the burden of overcoming qualified immunity by showing that the
22 plaintiff’s right a defendant allegedly violated was clearly established at the time of the alleged
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1 misconduct. *Baker v. Racansky*, 887 F.2d 183, 186 (9th Cir. 1989) (citing *Davis v. Scherer*, 468
2 U.S. 183, 197 (1984)).

3 2. *Discussion*

4 The record shows that defendants have met their burden of production by showing that
5 plaintiff's right, which defendants allegedly violated, was not clearly established when the DOC
6 recalculated Mr. Fields' sentences. In response to defendants' showing, plaintiff may produce
7 specific evidence that a genuine issue of material fact exists as to whether it would be clear to a
8 reasonable official that recalculating Mr. Fields' sentences was unlawful under the
9 circumstances. Plaintiff has failed to produce such evidence.

10 First, *Dress* is distinguishable. There, believing the judgment and sentence to be
11 erroneous, the DOC ran Dress' sentences consecutively, even though her judgment and sentence
12 stated that the sentences should run concurrently. *Dress*, 168 Wn. App. at 322-24. The court held
13 that the DOC did not have "the authority to either correct or disregard the provisions of an
14 allegedly erroneous final judgment and sentence." *Id.* at 325 (internal quotations omitted).
15 Further, the *Dress* court relied on *Matter of Davis*, 67 Wn. App. 1 (1992), where the DOC
16 transferred Davis to community placement upon release, even though the judgment and sentence
17 did not impose community placement. *Id.* at 4. The court concluded that the DOC's actions were
18 unauthorized, holding that "a trial court must amend the judgment and sentence before DOC can
19 impose community placement not specified in the original sentencing documents." *Id.* at 9.

20 Here, unlike in *Dress*, the judgment and sentence was silent as to whether Mr. Fields'
21 sentences should run concurrently or consecutively. Additionally, unlike in *Davis*, the DOC,
22 here, added nothing to the judgment and sentence. Instead, the DOC calculated how Mr. Fields'
23 sentences were to be structured. Specifically, relying on RCW 9.94A.589(2)(a), which states, in
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1 relevant part, that “whenever a person while under sentence for conviction of a felony commits
2 another felony and is sentenced to another term of confinement, the latter term shall not begin
3 until expiration of all prior terms,” the DOC concluded that, absent a court order to the contrary,
4 Mr. Fields’ sentences should run consecutively. Even if the DOC’s conduct was inconsistent
5 with the spirit of *Dress* and its sister cases, the relevant inquiry is whether it would have been
6 clear to a reasonable official that she was violating Mr. Fields’ right to be free from wrongful
7 incarceration by running his sentences consecutively.

8 Plaintiff has failed to show that a genuine issue of material fact exists as to this issue
9 where (a) the judgment and sentence in question was silent as to how Mr. Fields’ sentence
10 should run; (b) the relevant statute mandated that sentences run consecutively; and (c) the
11 purportedly relevant state court decisions were distinguishable. Plaintiff argues that the DOC
12 knew that Mr. Fields’ sentences should run concurrently because not only did the DOC initially
13 run his sentences as such, but also the subsequent audits allegedly confirmed that his sentences
14 should run as such. However, the DOC appears to have been attempting to correct an earlier
15 error. In any event, plaintiff has failed to show that a clearly established law existed at the time
16 prohibiting the DOC from recalculating Mr. Fields’ sentences under RCW 9.94A.589(2)(a).

17 Second, a reasonable official would not have known that she had a duty to investigate a
18 claim for improper calculation of sentences under these circumstances. In its calculations, the
19 DOC was entitled to rely on the state statute and the judgment and sentence in question.
20 Although plaintiff appears to have informed the DOC through an offender’s kite that the Kitsap
21 County Superior Court ordered that his sentences run concurrently, the DOC was not required to
22 search for additional records that might affect Mr. Fields’ sentences or to move the Kitsap
23 County Superior Court for an amendment of the judgment and sentence in question. *See, e.g.,*

1 | *Alston v. Read*, 663 F.3d 1094, 1099-1100 (9th Cir. 2011) (“[prison officials] were entitled to
2 | rely on the state statute and the original judgment received from the court in their sentencing
3 | calculations and were not required to go in search of additional courthouse records that might
4 | affect Alston's sentence beyond what was initially received from the court”). *See also Stein v.*
5 | *Ryan*, 662 F.3d 1114, 1119 (9th Cir. 2011) (“[p]rison officials may properly assume that they
6 | have the authority to execute the sentencing orders delivered to them by the court without fear of
7 | civil liability”). In fact, Mr. Fields was able to obtain his remedy himself by filing a motion with
8 | the court.

9 | It is unclear what motivated the DOC to recalculate Mr. Fields’ sentences. Although Ms.
10 | Crevier stated in her declaration that she reviewed his sentencing structure as part of a large scale
11 | review following *Dress*, she appears to have recalculated Mr. Fields’ sentences only after she
12 | learned that the DOC had not given Mr. Fields credit for the time served in the Kitsap County
13 | Jail. Absent the change in the sentencing calculation, Mr. Fields would have already been held
14 | past his maximum release date because, with the credit for the time served in the Kitsap County
15 | Jail, his maximum release date with concurrent sentences would have been in or around May
16 | 2012.

17 | However, a defense of qualified immunity may not be rebutted by evidence that a
18 | defendant’s conduct was malicious or otherwise improperly motivated. *Crawford-El v. Britton*,
19 | 523 U.S. 574, 587-88 (1998) (evidence concerning defendant’s subjective intent is simply
20 | irrelevant to that defense). Even if the DOC recalculated Mr. Fields’ sentence to cover up its
21 | mistake in failing to timely give Mr. Fields credit for the time served in the Kitsap County Jail, to
22 | overcome defendants’ qualified immunity defense, plaintiff must show that it would have been
23 | clear to a reasonable official that calculating Mr. Fields’ sentences as consecutive was unlawful
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1 under the circumstances. As stated, plaintiff has failed to satisfy this burden: the judgment and
2 sentence in question was silent on the issue; the state statute mandated that the sentences run
3 consecutively; and the purportedly relevant state court decisions were distinguishable.

4 Accordingly, the Court should grant defendants summary judgment on the basis that
5 defendants are entitled to qualified immunity on plaintiff's § 1983 claim.

6 **B. Plaintiff's state claims for false imprisonment and negligent supervision**

7 The Court should allow the parties to show cause why the Court should not decline to
8 exercise supplemental jurisdiction over plaintiff's state law claims.

9 Under 28 U.S.C. § 1367(c), a district court may decline to exercise supplemental
10 jurisdiction over state law claims if (1) the claims raise novel or complex issues of state law; (2)
11 the claims substantially predominate over the claim or claims the district court has original
12 jurisdiction over; (3) the district court has dismissed all claims over which it has original
13 jurisdiction, (4) in exceptional circumstances, there are other compelling reasons for declining
14 jurisdiction. "While discretion to decline to exercise supplemental jurisdiction over state law
15 claims is triggered by the presence of one of the conditions in § 1367(c), it is informed by the
16 values of economy, convenience, fairness, and comity." *Acri v. Varian Associates, Inc.*, 114 F.3d
17 999, 1001 (9th Cir. 1997) (internal citations omitted).

18 Here, the Court will dismiss all claims over which the Court has original jurisdiction on
19 the basis that defendants are entitled to qualified immunity. Further, plaintiff's claims appear to
20 raise novel or complex issues of state law, as evidenced by the state court appellate decisions.

21 Accordingly, the parties may show cause in writing, if any they may have, no later than
22 April 24, 2015, why the Court should not decline to exercise supplemental jurisdiction over
23 plaintiff's state law claims for false imprisonment and negligent supervision.

1 CONCLUSION

2 The Court should grant defendants summary judgment on plaintiff's § 1983 claim. The
3 parties may show cause why the Court should not decline to exercise supplemental jurisdiction
4 over plaintiff's remaining state claims.

5 Accordingly, it is hereby **ORDERED** that

6 Defendants' Motion and Memorandum for Summary Judgment and Dismissal (Dkt. 14)
7 is **GRANTED IN PART** as follows:

8 (1) The Motion and Memorandum for Summary Judgment and Dismissal is **GRANTED** as
9 to plaintiff's § 1983 claim, and that claim is dismissed.

10 (2) Not later than April 24, 2015, the parties may show cause in writing, if any they have,
11 why the Court should not decline to exercise supplemental jurisdiction over plaintiff's
12 state law claims for false imprisonment and negligent supervision. If the parties fail to
13 respond to this order to show cause, or fail to show cause as set forth above, the Court
14 will decline to exercise supplemental jurisdiction over plaintiff's state law claims for
15 false imprisonment and negligent supervision.

16 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
17 to any party appearing *pro se* at said party's last known address.

18 Dated this 10th day of April, 2015.

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21 ROBERT J. BRYAN
22 United States District Judge
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