

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION**

DONALD SMITH, JR.,)	
Plaintiff,)	Civil Action No. 5:01cv00026-H
)	
v.)	<u>Memorandum Opinion</u>
)	
RANDALL FISHER, et al.,)	By: Samuel G. Wilson
)	Chief United States District Judge
Defendants.)	

Plaintiff Donald Smith, Jr. brings this action pursuant to 28 U.S.C. §§ 1983, 1985 against Augusta County Sheriff Randall Fisher (“Fisher”) and Deputy Sheriff and Chief Administrator of the Augusta County Jail Ronald Keyser (“Keyser”), in their official and individual capacities, and Augusta County.¹ Smith claims that Fisher, Keyser and Augusta County violated his Eighth and Fourteenth Amendment rights by their deliberate indifference to the conditions of his prison confinement in the Augusta County Jail and by conspiring to deprive him of equal protection under the law. Smith also asserts a common law gross negligence claim against the three defendants. The court has jurisdiction pursuant to 28 U.S.C. § 1331 and may exercise supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367. The case is before the court on the defendants’ motions to dismiss. For the reasons that follow, Augusta County’s motion to dismiss the federal claims against it will be granted, and the court will decline to exercise supplemental jurisdiction over the gross negligence claim. With respect to Fisher and

¹In count III of the complaint, Smith asserts a common law battery claim against defendants Cedric L. Brown, Dallas J. Humphreys, and Derrick E. Archie, the inmates Smith alleges assaulted him while he was in prison. Smith does not assert a federal claim against these defendants nor assert diversity of citizenship. Thus, the court finds that Smith has failed to establish subject matter jurisdiction with respect to these defendants, and therefore will dismiss his claim against them.

Keyser, the court will grant the motion to dismiss the section 1983 claim against them in their official capacities, deny the motion to dismiss the section 1983 claim against them in their individual capacities, grant their motion to dismiss the section 1985 claims, and deny their motion to dismiss the gross negligence claims.

I.

Smith alleges the following facts. Smith was formerly employed by the State of Virginia as a corrections officer. In January 1998, Smith plead guilty to felony bribery. The Circuit Court of Augusta County convicted Smith and sentenced him to 10 years in prison with eight years suspended. Smith moved to withdraw his plea, and after Smith reported to the Augusta County Jail, the circuit court stayed his sentence pending a hearing on his motion. Smith did not request to be released on bond and remained incarcerated pending his hearing.

Because of severe overcrowding in the jail, prison officials presented Smith with a notice that allowed Smith to choose whether (1) “to be housed on the wing, with a bed, but not with the general population” or (2) “to be housed with the felony general population, with the possibility of having to sleep on the floor until a bed becomes available” (Compl., Ex. A.) The prison officials requested that Smith choose to be housed with the general population, and Smith agreed because he was afraid of his cell-mate on the prison wing.

Prison officials at the Augusta County Jail allowed and even tacitly encouraged inmates to brew their own wine and to consume it on Sundays. On Sunday, March 21, 1999, three inmates, acting under the influence of homemade wine, confronted Smith about his former work as a prison guard and attempted to provoke an altercation. Smith retreated, but the three inmates followed him into his cell where they choked him, and punched, kicked and stomped him about

the body and face. As a result of the attack, Smith suffered severe cuts and bruises as well as a detached retina in his right eye. After the assault, the circuit court released Smith on bond.

Although Fisher, Keyser, and Augusta County were each aware of the facts and circumstances that lead to Smith's assault, they failed to take the actions necessary to avoid his injuries.

Smith asserts claims against Fisher, Keyser and Augusta County under 28 U.S.C. § 1983 and 28 U.S.C. § 1985, as well as a Virginia state law claim of gross negligence. The court will consider the defendants motions to dismiss these claims in turn.

II.

Section 1983 imposes civil liability on any person acting under color of law to deprive another person of the rights and privileges secured by the Constitution and laws of the United States. 42 U.S.C. § 1983. Section 1983 "is not itself a source of substantive rights, but merely provides a method for vindicating federal rights elsewhere conferred." Albright v. Oliver, 510 U.S. 266, 271 (1994). Therefore, the "first step in any such claim is to identify the specific constitutional right allegedly infringed." Id.

To determine the particular constitutional right that is at issue in this case, the court must decide whether Smith was a pretrial detainee or a convicted prisoner at the time of the assault. See Brown v. Harris, 240 F.3d 383, 388 (4th Cir. 2001) (noting that if the defendant "was a pretrial detainee rather than a convicted prisoner, then the Due Process Clause of the Fourteenth Amendment, rather than the Eight Amendment" controlled the defendant's claim). The Supreme Court has provided some guidance on this issue by defining pretrial detainees as those "persons who have been charged with a crime but who have not yet been tried on the charge." Bell v. Wolfish, 441 U.S. 520, 523 (1979). The Court has also noted that Eighth Amendment

protection, which is applicable to convicted prisoners, not pretrial detainees, is not appropriate “until after [the State] has secured a formal adjudication of guilt.” Ingraham v. Wright, 430 U.S. 651, 671-672 n. 40 (1977). Thus, as indicated by the Fourth Circuit, a “formal adjudication of guilt” is a primary distinguishing factor between convicted prisoners and pre-trial detainees. See Brown, 240 F.3d at 388. At the time of Smith’s assault, the State had already secured a formal adjudication of guilt against him. Smith contends, nevertheless, that he was “technically a pre-trial detainee” because the state court had stayed Smith’s sentence pending a hearing on his post-trial motion to withdraw his guilty plea. This argument, however, conflicts with the Supreme Court and the Fourth Circuit’s precedent discussed above. Since the state had secured a formal adjudication of guilt against Smith, the court finds that Smith was a convicted prisoner at the time of the assault. Thus, by asserting a claim under section 1983, Smith invokes the protection of the Eighth Amendment. See Farmer v. Brennan, 511 U.S. 825, 832 (1994).

The Eighth Amendment protects prisoners from cruel and unusual punishment. In prison conditions cases, the Eighth Amendment requires that a prisoner’s conditions of confinement be at least “humane.” Id. To state a claim under the Eighth Amendment, Smith must have alleged facts that, if proven, would show (1) a deprivation of rights that is “objectively, sufficiently serious,” such as incarceration “under conditions posing a substantial risk of serious harm” and (2) a “sufficiently culpable state of mind” on the part of the defendants. Id. “In prison-conditions cases, the requisite state of mind is ‘deliberate indifference.’” Brown, 240 F.3d at 389 (citing Farmer, 511 U.S. at 834.). The deliberate indifference standard is met if the defendant “knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that substantial risk of serious harm exists, and he must

also draw the inference.” Farmer, 511 U.S. at 835. “Proof of an individual defendant’s personal involvement in the alleged wrong is, of course, a prerequisite to his liability on a claim for damages,” Gaston v. Coughlin, 249 F.3d 156, 164 (2d. Cir. 2001) (citations omitted), because there is no vicarious liability under section 1983. Monell v. Dept. of Social Servs., 436 U.S. 658, 691-94 (1978).

A.

Sheriff Fisher and Chief Deputy Keyser present two grounds in support of their motion to dismiss: (1) the Eleventh Amendment bars this action against them in their official capacities, and (2) they are not liable in their individual capacities because Smith has not alleged that they were personally involved in the conditions that resulted in his injury. The court will address these arguments in turn.

First, the court finds that Sheriff Fisher and Chief Deputy Keyser have Eleventh Amendment immunity from Smith’s claims against them in their official capacities. The Eleventh Amendment bars a suit for damages against a state by its own citizens, unless Congress has validly abrogated that immunity or the state, itself, has waived the immunity. Edelman v. Jordan, 415 U.S. 651, 662-63 (1974); McConnell v. Adams, 829 F.2d 1319, 1328 (4th Cir. 1987), cert. denied sub nom., Virginia, ex rel. State Bd. of Elections v. Kilgore, 486 U.S. 1006 (1988); Brickey v. County of Smyth, Virginia, 944 F. Supp. 1310, 1313 (W.D. Va. 1996)). In Virginia, a suit against a sheriff in his official capacity or the sheriff’s department is a suit against the state. Harris v. Hayter, 970 F. Supp. 500, 502 (W.D. Va. 1997) (citing Blankenship v. Warren County, 918 F. Supp. 970, 974, on recons., 931 F. Supp. 447, 449 (W.D. Va. 1996)); McCoy v. Chesapeake Correctional Ctr., 788 F. Supp. 890, 893 (E.D. Va. 1992) (“[M]embers of the

Sheriff's office who administer the jails are state officers.”). Smith does not claim any abrogation or waiver of the Commonwealth's immunity; therefore, Fisher, in his capacity as Sheriff of Augusta County, and Keyser, in his capacity as Deputy Sheriff and Chief Administrator of the Augusta County Jail, are immune from Smith's claims against them.

Next, the court finds that Smith has stated a claim under section 1983 against Fisher and Keyser in their individual capacities. Fisher and Keyser contend that they are not liable in their individual capacities because Smith has not alleged facts indicating that they were personally involved in the alleged deprivation of his rights. However, the complaint alleges that Fisher and Keyser “failed to classify the Plaintiff and to segregate him from the general population despite knowing full well that he was a former prison guard.” (Compl., ¶ 35). The court finds this allegation sufficient to meet the section 1983 prerequisite of personal involvement. The court further finds that Smith has adequately alleged that he was subjected to a sufficiently serious risk of harm by claiming that, as a former prison guard, he was housed with the general prison population, while the population was overcrowded and while the inmates were allowed to brew and consume wine. (Compl. ¶ 36-39). Likewise, Smith's allegation that the defendant's were aware of the prison's conditions and took no action on his behalf meets the pleading requirement for a claim of deliberate indifference. (Compl. ¶ 35, 37).²

²The court notes that although Smith has satisfied the minimal requirements of notice pleading, the fact that Smith declined the chance to be housed on the prison wing apart from the general population and instead chose to reside with the general population greatly diminishes his ability to survive a motion for judgment as a matter of law.

B.

Augusta County moves to dismiss Smith's section 1983 claim against it arguing that Smith has failed to allege that Augusta County maintained a policy or custom related to Smith's alleged deprivation. Under 42 U.S.C. § 1983, counties, like other local government entities, may be liable for violations of constitutional rights. Monell v. Dept. of Social Services of City of New York, 436 U.S. 658, 690 (1978); Pembaur v. City of Cincinnati, 475 U.S. 469, 483 n. 12 (1986). The violation, however, must be related to the county's "policy or custom." Monell, 436 U.S. at 690-91; City of St. Lewis v. Praprotnik, 485 U.S. 112, 124 n. 1 (1988). The "policy or custom" may be a formal one, such as a regulation or ordinance, or an informal one that is "so permanent and well settled as to constitute a 'custom or usage' with the force of law." Adickes v. S.H. Kress & Co., 398 U.S. 144, 167-68; Monell, 436 U.S. at 691.

The court finds that Smith has alleged no fact indicating that Augusta County had a formal or informal policy or custom of placing former prison guards with the general prison population. In fact, the evidence that Smith attaches to the complaint is flatly to the contrary. The prison officials allowed Smith to choose whether or not he would be housed with the general prison population. (Compl., Ex. A). Although Smith alleges that prison officials asked him to select to live with the general population, he does not allege that they coerced his decision. Consequently, the court finds that, since Smith was allowed to choose where he would be housed, his placement with the general prison population was not part of an official county policy.

III.

Next, Smith seeks to state a cause of action under 42 U.S.C. § 1985(3).³ Fisher, Keyser and Augusta County argue that Smith fails to state a section 1985 claim because he failed to allege any type of class-based animus that falls within the scope of the statute.

Section 1985 provides a cause of action where two or more persons conspire to deprive any person of equal protection under the law. 42 U.S.C. § 1985(3). To be actionable under section 1985, a deprivation of rights must be based on some class-based animus. E.O. Williams v. County of Greene, 734 F.Supp. 235, 239 (W.D. Va. 1990) (citing Griffin v. Breckenridge, 403 U.S. 88, 102 (1971)). In the words of the Supreme Court, “it is a close question whether § 1985(3) was intended to reach any class-based animus other than animus against Negroes and those who championed their cause, most notably Republicans.” United Brotherhood of Carpenters v. Scott, 463 U.S. 825, 836 (1983) (holding that a group sharing common “economic views, status, or activities” is not a class for the purposes of section 1985). Thus, to meet the requirement of a class-based discriminatory animus, “the class must possess the discrete, insular and immutable characteristics comparable to those characterizing classes such as race, national origin and sex.” Bushi v. Kirven, 775 F.2d 1240, 1257 (4th Cir. 1985) (rejecting state employee “whistleblowers” as a class subject to section 1985(3) protection). When considering whether to extend protection over a new class, the court must be mindful that “class protected can extend no further than to those classes of persons who are, so far as the enforcement of their rights is concerned, ‘in unprotected circumstances similar to those of the victims of Klan violence.’” Bushi, 775 F.2d at 1258 (quoting Scott, 463 U.S. at 851.).

³The court will dismiss Smith’s section 1985 claim against Fisher and Keyser in their official capacities for the reasons stated in section I.A, *supra*.

The complaint alleges that the class discriminated against in this case consists of former prison guards or nonviolent offenders. The court finds that, even in the context of prison confinement, former prison guards and nonviolent offenders do not qualify as a class entitled to the benefits of section 1985(3). Neither prison guards nor nonviolent offenders meet the test of possessing “characteristics comparable to those characterizing classes such as race, national origin, and sex.” Nor can the court say that, given the strict regulation of prison life, these classes are in “unprotected circumstances similar to those of Klan violence.” Accordingly, Smith’s section 1985 claim will be dismissed.

IV.

In count II of the complaint, Smith asserts a claim against Augusta County, Fisher and Keyser for gross negligence under Virginia state law. Having dismissed Smith’s federal claims against Augusta County, the court will decline to exercise supplemental jurisdiction over his state law claims against it pursuant to 28 U.S.C. § 1367(c)(3). Thus, the court need only consider the merits of Fisher and Keyser’s motion to dismiss.

Fisher and Keyser argue that the court should dismiss Smith’s claim of gross negligence because they are entitled to the protection of sovereign immunity. The court finds that it need not determine whether Fisher or Keyser are entitled to the protection of sovereign immunity because sovereign immunity does not shield persons from liability for gross negligence. See Colby v. Boyden, 241 Va. 125, 128, 400 S.E.2d 184, 186 (Va. 1991) (citing James v. Jane, 221 Va. 43, 53, 282 S.E.2d 864, 869 (1980); Sayers v. Bullar, 180 Va. 222, 229, 22 S.E.2d 9, 12 (1942)). Accordingly, the court will deny Fisher and Keyser’s motion to dismiss the gross negligence claim.

V.

For the foregoing reasons, the court will grant Augusta County's motion to dismiss Smith's section 1983 and 1985 claims, and decline to exercise supplemental jurisdiction over Augusta County with respect to the gross negligence claim. The court will grant Fisher and Keyser's motion to dismiss the section 1983 claim against them in their official capacities, deny their motion to dismiss the section 1983 claim against them in their individual capacities, grant their motion to dismiss the section 1985 claim, and deny their motion to dismiss the gross negligence claim.

ENTER: this __ day of _____, 2002.

CHIEF UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION**

DONALD SMITH, JR.,)	
Plaintiff,)	Civil Action No. 5:01cv00026-H
)	
v.)	<u>ORDER</u>
)	
RANDALL FISHER, et al.,)	By: Samuel G. Wilson
)	Chief United States District Judge
Defendants.)	

In accordance with the memorandum opinion entered this day, it is hereby **ORDERED**
and ADJUDGED that

- (1) Augusta County's motion to dismiss Smith's section 1983 and 1985 claims is **GRANTED**, and the court **DECLINES** to exercise supplemental jurisdiction over Augusta County with respect to the gross negligence claim;
- (2) Fisher and Keyser's motion to dismiss the section 1983 claim against them in their official capacities is **GRANTED**;
- (3) Fisher and Keyser's motion to dismiss the section 1983 claim against them in their individual capacities is **DENIED**;
- (4) Fisher and Keyser's motion to dismiss the section 1985 claim is **GRANTED**;
- (5) Fisher and Keyser's motion to dismiss the gross negligence claim is **DENIED**.
- (6) Smith's claim of common law battery against Brown, Humphreys and Archie is **DISMISSED** for lack of jurisdiction.

ENTER: this __ day of _____, 2002.

CHIEF UNITED STATES DISTRICT JUDGE