

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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LARRY TURNER,

95 CV 4822

Plaintiff,

MEMORANDUM  
AND  
ORDER

-against-

JOHN WHITE and MICHAEL KASS,  
Defendants.

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LARRY TURNER  
615 24<sup>th</sup> Street  
Niagra Falls, New York 14301  
plaintiff pro se.

DENNIS VACCO, ATTORNEY GENERAL  
State of New York  
Department of Law  
(John Paul Barry, Jr., of counsel)  
120 Broadway  
New York, New York 10271  
for defendants.

NICKERSON, District Judge:

Larry Turner brings this pro se action pursuant to  
42 U.S.C. § 1983 against New York State Parole Officers  
John White and Michael Kass for allegedly handcuffing  
him and hitting his head against a wall without  
provocation, and for requiring him to perform tasks as

part of his parole that were beyond his abilities. The complaint was filed on November 9, 1995 in the Southern District of New York and transferred to this District on November 22, 1995. Plaintiff amended his complaint on February 11, 1997.

The defendants have moved for summary judgment.

I

The complaint and the amended complaint allege the following pertinent facts.

Plaintiff suffers from a bullet lodged in his skull, which he alleges limits his ability to function. Plaintiff complains that the defendants asked him to perform certain tasks without taking this handicap into consideration, and without offering to do the tasks for him.

The complaint alleges that on July 14, 1993, defendant White as plaintiff's parole officer sent plaintiff to Worth Street to retrieve a copy of his social security card. On September 1, 1993 White ordered plaintiff to supply copies of his conditional

discharge and a Medicaid Card. Around September 15, 1993 White told plaintiff to apply for welfare benefits. On September 29, 1993, because of White's suggestion that plaintiff apply for welfare benefits, plaintiff waited in a long line for his welfare card and then had to rush across town to keep his regular visit with defendant White.

Plaintiff also alleges that White abused him physically. He claims in his amended complaint that on October 13, 1993 White threatened to report that plaintiff was in violation of his parole, and "[i]n the process of handcuffing me . . . slammed my head against the wall." Plaintiff says that defendant Kass witnessed the altercation and ordered White to release plaintiff. The original complaint states that this incident occurred on December 20, 1993, and that he was taken to the emergency room at Long Island College Hospital immediately after the injury. Plaintiff's sworn deposition in this case states that he did not seek medical treatment after the incident.

On October 18, 1993 plaintiff says that he spoke with Kass about the incident on October 13, but that Kass "just shrugged his shoulders." Plaintiff alleges that he suffered a seizure on this day as a result of the October 13 incident and was admitted to Long Island College Hospital.

On December 22, 1993 plaintiff sought psychiatric treatment, allegedly as a result of the mental stress placed on him by defendant White.

On February 7, 1994 plaintiff allegedly spoke with Kass again about his problems with White. Around this time, plaintiff claims, White banged on the door of plaintiff's house at 5:30 a.m., frightening plaintiff's family. Plaintiff states that Kass discouraged him from filing a complaint against White, and ordered that plaintiff be handcuffed to a chair. Kass allegedly kept plaintiff handcuffed for almost an hour and screamed at him. Plaintiff was then taken to the Brooklyn Medical Health Clinic by a parole officer.

On February 16, 1994 plaintiff filed a complaint against White and Kass. Plaintiff alleges that he "was

asked to get up out of my chair, place by hands on the wall and was then handcuffed." He was taken to the Brooklyn House of Detention for violating the terms of his parole. Plaintiff's parole subsequently was reinstated.

## II

To prevail on a motion for summary judgment, the moving party must demonstrate "that there is no genuine issue as to any material fact and that [it] is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c). Uncertainty regarding the truth of any alleged material fact will defeat a summary judgment motion. United States v. One Tintoretto Painting, 691 F.2d 603, 606 (2d Cir. 1982).

## III

It is not clear from the complaint whether the defendants have been sued in their individual or official capacities.

Defendants are officers of the Division of Parole, an agency of the state of New York. N.Y. Executive Law § 259. The Eleventh Amendment prohibits the award of damages against state officials sued in their official capacities. Papasan v. Allain, 478 U.S. 265, 278 (1986). As plaintiff seeks only damages in this suit, the case against defendants in their official capacities cannot be maintained.

Public officials are protected by the doctrine of qualified immunity from civil suits against them in their individual capacities arising from the performance of discretionary functions where their conduct did not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). When it is objectively reasonable for a public official to believe that his conduct is not in violation of a plaintiff's federal rights, that public official is protected by qualified immunity. P.C. v. McLaughlin, 913 F.2d 1033, 1039 (2d Cir. 1990).

Both defendants were objectively reasonable to believe that ordering plaintiff to obtain his own social security, conditional discharge, welfare, and Medicaid cards did not violate plaintiff's rights. The Court will grant summary judgment on this claim.

#### IV

Plaintiff recites three Eight Amendment claims asserting that defendants used excessive force against him. He alleges that they handcuffed him without cause on February 16, 1994. He states that on February 7, 1994 defendant Kass handcuffed plaintiff to a chair for almost an hour and verbally harassed him. Finally, plaintiff claims that on October 13, 1993 defendant White handcuffed him and slammed his head against a wall. In his March 4, 1994 deposition, plaintiff describes the incident as follows:

[Defendant White] got aggravated, got out of his chair and he was going to violate me [that is, declare him in violation of his parole]. And I get up, backing up toward the wall. And he got up and took my right hand and puts it behind my back. When I was against the wall he grabbed me on the collar, my face is against the wall, then my head

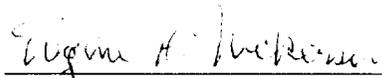
was facing to the left side, the left side of my head was against the wall. And he pushed my head up against the wall, slamming me against the wall . . . . [He] pushed my head from the wall and slammed my head against the wall.

The question of whether the force used against plaintiff rises to the level of an "unnecessary and wanton infliction of pain" required to sustain an Eighth Amendment claim is an issue of material fact that precludes a grant of summary judgment. See Hudson v. McMillian, 503 U.S. 1, 7--8, 112 S. Ct. 995, 999 (1992). Summary judgment on these Eighth Amendment claims is denied.

Defendants' motion for summary judgment is granted in part and denied in part.

So ordered.

Dated: Brooklyn, New York  
April 30, 1998

  
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Eugene H. Nickerson, U.S.D.J.