

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION**

JOHN LOUIS FREEMAN, SR.,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 2:17-cv-00330
	:	
VIRGINIA DEPARTMENT OF CORRECTIONS;	:	
HAROLD W. CLARKE, Director of the Virginia	:	
Department of Corrections in his individual and	:	
official capacities; KENNETH W. STOLLE,	:	
Sheriff of the City of Virginia Beach in his	:	
individual and official capacities; JOHN DOE(S)	:	
1-10, employees of the Virginia Department of	:	
Corrections or the Virginia Beach Corrections	:	
Center in their individual and official capacities,	:	
	:	
Defendants.	:	

**MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

Defendant, Kenneth W. Stolle (“Sheriff Stolle”), by counsel, and pursuant to Fed. R. Civ. P. 56, hereby submits this Memorandum of Law in Support of his Motion for Summary Judgment.

I. Introduction

Plaintiff, at all relevant times a Virginia Dept. of Corrections (“VDOC”) inmate housed in the Virginia Beach Correctional Center (“VBCC”), claims he was not given credit for time served out-of-state on a Virginia detainer, and was thus held in custody beyond his release date. He alleges violations of the Eighth and Fourteenth Amendments and also raises a false imprisonment claim under Virginia law against VDOC and its Director, Harold Clarke, Sheriff Stolle, and John Doe employees of VDOC or VBCC.¹ Plaintiff seeks both declaratory and

¹ Individuals hired by Sheriff Stolle are employees of the Virginia Beach Sheriff’s Office, not of the VBCC.

monetary relief. In the absence of any material dispute of fact, plaintiff's claims against Sheriff Stolle and his John Doe employees must be dismissed as a matter of law. VDOC, not Sheriff Stolle or his employees, had the legal authority to compute plaintiff's sentence and to release him from custody. Further, plaintiff cannot recover monetary damages on his official capacity claims.

II. Statement of Undisputed Facts Pursuant to Local Rule 56(b)

1. Sheriff Stolle is the duly elected Sheriff of the City of Virginia Beach, Virginia, having taken office on January 1, 2010 and is responsible for the operation and maintenance of the VBCC. (Ex. 1, Stolle Aff.)

2. At all times relevant to plaintiff's claims, he was a state prisoner in the custody of VDOC, VSP No. 1329654. (Ex. 2, Complaint, ¶ 6)

3. At all times relevant to plaintiff's claims against Sheriff Stolle and the unnamed John Doe employees, plaintiff was housed by VDOC in the VBCC. (Ex. 2, Complaint, ¶ 6)

4. Plaintiff was held in the Commonwealth of Massachusetts on a Virginia detainer from October 7, 2011 until March 4, 2013, and from February 10, 2014 to February 24, 2014. (Ex. 2, Complaint, ¶¶ 21-22)

5. On July 18, 2014, plaintiff was committed to VDOC for two years for possession of methamphetamine by the Norfolk Circuit Court in Case No. CR10000165-00. (Ex. 3, Order)

6. On July 29, 2014, plaintiff was committed to VDOC for one year for violation of probation by the Virginia Beach Circuit Court in Case No. CR04-1178. (Ex. 4, Order)

7. On November 13, 2014, plaintiff was sentenced to 75 days, with 60 days suspended, or 15 days, by the Northampton General District Court in Case No. T14-5639. (Ex. 5, Order)

8. On February 24, 2014, upon plaintiff's motion, the Virginia Beach Circuit Court issued a Disposition Notice in Case No. CR04-1178 modifying plaintiff's sentence of 7/29/14 "to reflect the defendant shall be given credit for the time served from 10/7/11 – 3/4/13." An Order was entered on March 4, 2015. (Ex. 6, Disposition Notice/Order)

9. By Order dated July 13, 2015, the Norfolk Circuit Court issued an order in Case No. CR10000165-00 granting plaintiff's motion to "modify the sentence imposed on July 18, 2014 to include, "The defendant shall receive credit for time served while in custody in [Massachusetts], pending his extradition to [Virginia] on this charge." (Ex. 7, Order)

10. On August 10, 2015, VDOC issued a Notification of Release Post/Probation Supervision for John Freeman VSP No. 1329654, stating that plaintiff was being released to post probation supervision on the Virginia Beach charges. Because he was to be released on the Virginia Beach and Norfolk charges, VDOC issued a corrected Notification of Release Post/Probation Supervision. Plaintiff was thereafter released from VDOC custody at VBCC. (Ex. 8, Notification of Release/Corrected Notification of Release; Complaint, ¶ 37)

11. VDOC has the sole authority to calculate the sentence of a prisoner placed in VDOC custody pursuant to Va. Code § 53.1-20(B), even if that prisoner is housed by VDOC at VBCC. (Ex. 1, Stolle Aff.)

12. Neither Sheriff Stolle nor any employee of the Virginia Beach Sheriff's Office has the authority to release a state prisoner in VDOC custody who is housed at VBCC from VBCC without a Notification of Release from VDOC or a court order issuing a writ of habeas corpus and mandating the prisoner's release. (Ex. 1, Stolle Aff.)

III. Argument

A. Summary Judgment Standard

Summary judgment “shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56. *See Anderson v. Liberty Lobby Inc.*, 477 U.S. 242, 255 (1986). The moving party bears the burden of proving that judgment on the pleadings is appropriate, and must demonstrate that no genuine issues of material fact are present for resolution. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

Where the record, taken as a whole, could not lead a rational trier of fact to find for the non-moving party, such as where the non-moving party fails to make a sufficient showing on an essential element of the claims on which he bears the burden of proof, the moving party prevails. *Anderson*, 477 U.S. at 248-49; *Celotex Corp.*, 477 U.S. at 322. While the court draws all inferences in favor of the non-moving party, speculative assertions will not suffice. *Ross v. Commc’ns Satellite Corp.*, 759 F.2d 355, 364 (4th Cir. 1989).

B. Plaintiff Fails to set forth a Cognizable Claim against Sheriff Stolle

It is undisputed that plaintiff was a VDOC prisoner, housed in the VBCC.² *See* Complaint, ¶ 6 (“Freeman is ... a former prisoner of [VDOC] ... [VBCC] is the jail in which Freeman was physically incarcerated during the times relevant to this Complaint.”). Under Virginia law, plaintiff was in VDOC custody. Virginia Code § 53.1-20 (B) provides that:

Persons convicted of felonies committed on or after January 1, 1995, and sentenced to the Department or sentenced to confinement in jail for a year or more shall be placed in the custody of the Department and received by the Director into the state corrections

² As this Court has noted, “[w]hen the VDOC holds an inmate in a local jail for more than ninety days, it essentially is leasing prison space from the local government.” *Hill v. Hutto*, 537 F. Supp. 1185, 1189 (E.D.Va. 1982).

system within sixty days of the date on which the final sentencing order is mailed by certified letter or sent by electronic transmission to the Director by the clerk.

Va. Code § 53.1-20 (B).

In a strikingly similar case, this Court held that, where an inmate is in VDOC custody pursuant to §53.1-20(B), but housed in a local facility, VDOC remains in control of the calculation of the inmate's sentence and release. In *Cheatham v. Johnson*, No. 3:09-CV-649, 2010 U.S. Dist. LEXIS 14346 (E.D.Va. Feb. 18, 2010), a former VDOC inmate, who had been housed in a regional jail, brought due process, Eighth Amendment, and false imprisonment claims arising from the miscalculation of his sentence against the Director of VDOC, the regional jail superintendent, and the local sheriff's office commander for confinement, following his release from the regional jail. In *Cheatham*, the plaintiff was released pursuant to a court order, after filing a successful petition for a writ of habeas corpus; the circuit court found that VDOC had erroneously interpreted the court's earlier order regarding the plaintiff's sentence, the plaintiff had served his sentence, and he was being held in custody incorrectly.

The jail superintendent and sheriff's office commander moved to dismiss or in the alternative for summary judgment on all claims, asserting that neither they nor any of their employees had the authority to compute the plaintiff's sentence or to release him unless ordered to by VDOC or by court order. The Court granted summary judgment in their favor, concluding as follows:

Even accepting the DOC record provided by Cheatham, he cannot escape the fact that neither Lee nor Manning had the ability to compute Cheatham's sentence or release him prior to the Loudoun County Circuit Court's order. Cheatham's sentence was for three years and, thus, under Virginia law, Cheatham's fate was in the hands of the DOC. Va. Code §53.1-20(B) ... DOC prisoners are routinely physically kept in local and regional jails, however, the exact length and calculation of those prisoners' sentences remains in DOC's control. Cheatham experienced that very reality. Thus, because Lee and Manning never had the ability to control Cheatham's sentence, their Motions for Summary Judgment as to all three claims are GRANTED.

Id. at *16-17.

The *Cheatham* holding compels dismissal of plaintiff's Eighth, Fourteenth Amendment, and false imprisonment claims against Sheriff Stolle and the unnamed John Doe employees. First, neither Sheriff Stolle nor his employees had control over the calculation of plaintiff's sentence or had the authority to release plaintiff without being instructed to do so by VDOC. As reflected in §53.1-20(B), VDOC had custody of plaintiff and his "fate was in the hands of [V]DOC." *Cheatham*, 2010 U.S. Dist. LEXIS 14346, *16. Second, Sheriff Stolle did not have a court order granting a habeas petition and ordering plaintiff's release. *See Leonard v. Hammond*, 804 F.2d 838, 840 (4th Cir. 1986) (holding that state prisoner's exclusive remedy is habeas corpus where prisoner seeks release); *see also Preiser v. Rodriguez*, 411 U.S. 475, 488-89 (1973) (allowing relief in habeas corpus where state prisoner attacks fact of or length of confinement). The two court orders which plaintiff relies upon are orders of the Virginia Beach and Norfolk Circuit Courts arising in plaintiff's criminal cases in those two jurisdictions which only ordered the modification of plaintiff's sentence.

In sum, VDOC had the sole authority to calculate plaintiff's sentence, and absent a Notification of Release from VDOC or a court order mandating release, Sheriff Stolle had no legal authority to release plaintiff from VBCC. Plaintiff's Eighth Amendment, Fourteenth Amendment, and false imprisonment claims against Sheriff Stolle and his John Doe employees must be dismissed as a matter of law.

C. Plaintiff's Claim for Monetary Relief is Barred by the Eleventh Amendment

Plaintiff sues Sheriff Stolle and his John Doe employees both individually and in their official capacity and requests both declaratory relief and compensatory and punitive damages. The Eleventh Amendment bars plaintiff's official capacity claims seeking money damages.

“The Eleventh Amendment limits the Article III jurisdiction of the federal courts to hear cases against States and state officers acting in their official capacities.” *Kitchen v. Upshaw*, 286 F.3d 179, 183-84 (4th Cir. 2002). A suit for damages against a sheriff in an official capacity, like other Virginia constitutional officers, is considered a suit against the state and is barred by the Eleventh Amendment. As this Court opined, “federal district courts applying Virginia law have repeatedly held that Virginia Sheriffs, and their deputies, are “state officers” for the purpose of the Eleventh Amendment.” *Vollette v. Watson*, 937 F. Supp. 2d 706, 714-15 (E.D.Va. 2013). *See Bland v. Roberts*, 857 F.Supp.2d 599, 610 (E.D.Va.2012) (finding a “suit against the [Virginia] Sheriff in his official capacity is in fact a suit against the State,” and thus, “Eleventh Amendment protection applies.”).

See also Smith v. McCarthy, 349 Fed. App’x 851, 858 n. 11 (4th Cir.2009) (unpublished) (“[T]he district court did not err in dismissing the [plaintiffs'] claims against [the deputy sheriffs] in their official capacities, as they are afforded immunity by the Eleventh Amendment.”); *Harris v. Hayter*, 970 F. Supp. 500, 502 (W.D.Va.1997) (finding Eleventh Amendment immunity for sheriff’s deputies); *Blankenship v. Warren County*, 931 F. Supp. 447, 449 (W.D.Va.1996) (same).

Thus, plaintiff’s official capacity claims seeking monetary damages against Sheriff Stolle and his John Doe employees must be dismissed as a matter of law.

IV. Conclusion

For the reasons set forth above, defendant Kenneth W. Stolle respectfully requests this Court to grant his Motion for Summary Judgment and to dismiss plaintiff’s claims against him and his John Doe employees, with prejudice.

KENNETH W. STOLLE

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of July, 2017 I will electronically file the foregoing *Memorandum of Law in Support of Motion for Summary Judgment* with the Clerk of Court using the Cm/ECF system which will then send a notification of such file (NEF) to the following:

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