

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

KEVIN ROSE,

Plaintiff,

v.

GEORGIA DEPARTMENT OF CORRECTIONS,
CORRECTIONS OFFICER W. JEFFERSON, individually,
COUNSELOR C. BULLARD, individually,
DIRECTOR MELODEE A. STEWART, individually,
DEPUTY WARDEN NOBLE, individually,
WARDEN EDWARD PHILBIN, individually,
WARDEN WALTER BERRY, individually, and
JANE and JOHN DOE 1-10, individually,

Defendants.

Civil Action File No.

**JURY TRIAL
DEMANDED**

COMPLAINT

Plaintiff Kevin Rose files this Complaint pursuant to the Georgia Tort Claims Act (“GTCA”), O.C.G.A. § 50-21-20, *et seq.*, and 42 U.S.C. § 1983 showing as follows:

INTRODUCTION

1. Plaintiff Kevin Rose (“Rose”) alleges that the negligent performance of ministerial duties and deliberate indifference of officials of the Georgia Department of Corrections led to him being incarcerated for seventeen (17) months longer than his proper two year sentence of incarceration, in direct contravention of the Superior Court’s sentencing Order and state law regarding probation revocation. During this time, Rose suffered anguish and anxiety on a daily basis, facing the prospect of indefinite incarceration. Once the ministerial error was finally uncovered, Rose was promptly released. This action is brought to compensate Rose for the seventeen months of his life that were taken from him and replaced with daily

suffering. Rose also brings this action as a deterrent to encourage the Department of Corrections and its officials to adequately protect the lives and liberties of Georgians.

PARTIES

2. Plaintiff Kevin Rose is an adult resident citizen of the State of Georgia.

3. Defendant Georgia Department of Corrections is a state government entity of the State of Georgia, and pursuant to O.C.G.A. § 50-21-35, Defendant shall be served with process through its chief executive officer, Commissioner Gregory C. Dozier, at his usual office address of Georgia Department of Corrections, Department Headquarters, 7 MLK Jr. Drive, Suite 542, Atlanta, Georgia 30334, and through the Director of Risk Management Services for the Georgia Department of Administrative Services, Wade Damron, at his usual office address of Risk Management Services, Georgia Department of Administrative Services, 200 Piedmont Avenue SE, Suite 1208, West Tower, Atlanta, Georgia 30334.

4. Defendant Corrections Officer W. Jefferson (“C.O. Jefferson”) is a Georgia Department of Corrections official, who is sued in his individual capacity. At all times relevant to the complaint, C.O. Jefferson acted under the color of law.

5. Counselor C. Bullard (“Counselor Bullard”) is a Georgia Department of Corrections official, who is sued in her individual capacity. At all times relevant to the complaint, Counselor Bullard acted under the color of law.

6. Division Director Melodee A. Stewart (“Director Stewart”) is a State Board of Pardons and Parole official, who is sued in her individual capacity. At all times relevant to the complaint, Director Stewart acted under the color of law. Director Stewart’s office and residence is based in Fulton County, Georgia.

7. Deputy Warden Noble is a Georgia Department of Corrections official, who is sued in his individual capacity. At all times relevant to the complaint, Deputy Warden Noble acted under the color of law.

8. Warden Edward Philbin (“Warden Philbin”) is a Georgia Department of Corrections official, who is sued in his individual capacity. At all times relevant to the complaint, Warden Philbin acted under the color of law.

9. Warden Walter Berry (“Warden Berry”) is a Georgia Department of Corrections official, who is sued in his individual capacity. At all times relevant to the complaint, Warden Berry acted under the color of law.

10. Defendants Jane and John Doe 1–10 are various state actors sued in their individual capacities. At all times relevant to the complaint, the Does acted under the color of law.

JURISDICTION AND VENUE

11. Pursuant to O.C.G.A. § 50-21-20, *et seq.*, this Court has subject matter jurisdiction over the claims alleged herein.

12. Plaintiff has complied with the provisions of O.C.G.A. § 50-21-26(a), providing, by letter January 24, 2018, initial notice of his claim to the Risk Management Division of the Georgia Department of Administrative Services (hereinafter, “DOAS”) by way of certified mail, return receipt requested, as evidenced by a copy of said notice, together with a copy of the delivery receipt for said notice, attached hereto at Exhibit A.

13. Plaintiff, in further compliance with the provisions of O.C.G.A. § 50-21-26(a), by letter addressed as instructed by Defendant and dated January 24, 2018, provided notice of his claim, identified his losses, and demanded payment for said losses by way of certified mail,

return receipt requested, to the Georgia Department of Corrections, as evidenced by a copy of said notice, together with a copy of the delivery receipt for said notice, attached hereto at Exhibit B.

14. Prior to filing this Complaint, in accordance with the requirements of O.C.G.A. § 50-21-26(b), by letter from DOAS dated February 12, 2018, a copy of which is attached hereto at Exhibit C, Plaintiff received a denial of his claim for damages.

15. In accordance with O.C.G.A. § 50-21-35, a copy of this complaint, showing the date of filing, has been mailed to the Georgia Attorney General, the Honorable Christopher Carr, by way of certified mail, return receipt requested, to his usual address of Office of the Attorney General, 40 Capitol Square, SW, Atlanta, Georgia 30334, and a certificate attesting to said mailing is attached to this complaint, as Exhibit D.

16. Pursuant to O.C.G.A. § 50-21-28, venue is proper in the State Court of Fulton County as some of the negligent performance of ministerial duties occurred in Fulton County.

17. Pursuant to, e.g., *Haywood v. Drown*, 556 U.S. 729 (2009), this Court has concurrent jurisdiction over Plaintiff's federal claims brought pursuant to 42 U.S.C. § 1983 and the Eighth and Fourteenth Amendments to the United States Constitution.

FACTS

18. In 2014, Rose went to visit his family in his former home of Whitfield County.

19. Rose had been banished from Whitfield County as a general condition of his probation of an earlier offense.

20. Rose was arrested for being in Whitfield County in contravention of the general terms of his probation.

21. As a result, Rose’s probation was revoked and he was sentenced to serve two years of incarceration as a result.

22. The probation revocation order read in relevant part: “the Defendant is hereby ordered to serve the balance of the original sentence of 10 years suspended upon service of two years.”

23. Because Rose only violated a general term of his probation, the maximum period of incarceration to which he could be sentenced was two years. *See* O.C.G.A. § 42-8-34.1(c) (“At any revocation hearing, upon proof that the defendant has violated any general provision of probation or suspension other than by commission of a new felony offense, the court shall consider the use of alternatives to include community service, probation detention centers, special alternative incarceration, or any other alternative to confinement deemed appropriate by the court or as provided by the state or county. In the event the court determines that the defendant does not meet the criteria for such alternatives, the court may revoke the balance of probation or not more than two years in confinement, whichever is less.” (emphasis added)).

24. No official of the Georgia Department of Corrections intended to improperly incarcerate Plaintiff.

25. At all relevant times, all involved officials of the Georgia Department of Corrections were acting within the scope of their official duties.

26. Despite the clarity of the Superior Court’s Order and the clarity of the dictates of O.C.G.A. § 42-8-34.1(c), Defendant Georgia Department of Corrections computed Rose’s sentence as requiring him to serve 2,320 days—well over two years.

27. The computation of a sentence is a ministerial duty, the breach of which is negligent.

28. The following of a judge's Order to have an inmate serve a certain sentence is a ministerial duty, the breach of which is negligent.

29. The obligation imposed by O.C.G.A. § 42-8-34.1(c) to not revoke probation for more than two years is a ministerial duty, the breach of which is negligent.

30. Georgia Department of Corrections Standard Operating Procedure IIA22-0001 regarding admissions and computation imposes a ministerial duty to correctly input information about a sentence stemming from a probation revocation. The breach of that duty is negligent.

31. Rose was properly incarcerated between April 20, 2014 and April 20, 2016.

32. Rose's detention was improper from April 21, 2016 until he was released from custody on or around September 27, 2017.

33. Rose has enjoyed his freedom since his release on or around September 27, 2017, eagerly providing for himself and his family and putting his life back together.

34. Rose's improper detention was cause by the negligent breach of various ministerial duties.

Additional Facts Relevant to Federal Claims

35. While incarcerated at Autry State Prison, Rose explained to a wide range of individuals that his sentence had been improperly calculated by officials with the Georgia Department of Corrections and that, as a result, he was set to be incarcerated for over six years when his sentence, and Georgia law, only allowed him to be sentenced to two years of custody. The following recitation includes some of the more salient details of his efforts to prove that his incarceration beyond two years was improper.

36. Rose told Corrections Officer Deputy W. Jefferson on numerous occasions that his sentence had been improperly computed. Rose explained that he had been sentenced to the

balance of his original sentence, suspended upon service of two years. He also explained that because he violated only a general term of his probation, the most time that could be revoked was two years under Georgia law.

37. It was apparent to Rose that Corrections Officer Jefferson subjectively understood Rose's complaint about his sentence computation and resulting overdetention.

38. Corrections Officer Jefferson did nothing to whatsoever to attend to the significant risk of the violation of Rose's rights posed by his overdetention. This inaction goes beyond mere negligence.

39. Rose told Counselor Bullard on numerous occasions that his sentence had been improperly computed. Rose explained that he had been sentenced to the balance of his original sentence, suspended upon service of two years. He also explained that because he violated only a general term of his probation, the most time that could be revoked was two years under Georgia law.

40. It was apparent to Rose that Counselor Bullard subjectively understood Rose's complaint about his sentence computation and resulting overdetention.

41. Counselor Bullard acknowledged to Rose that he was being detained improperly.

42. Counselor Bullard did nothing to whatsoever to attend to the significant risk of the violation of Rose's rights posed by his overdetention. This inaction goes beyond mere negligence.

43. Director Stewart wrote to Rose in October 2014 explaining to him that he was ineligible for parole and that he would serve out the full six plus years of his sentence as calculated by the Georgia Department of Corrections. At the time Stewart wrote this correspondence she knew that his sentence from the Superior Court provided only that he was to

serve two years, with the rest of his sentence to be served on probation, and that he was not parole ineligible. She was thus subjectively aware of a significant risk of Rose being overdetailed.

44. Director Stewart did nothing to whatsoever to attend to the significant risk of the violation of Rose's rights posed by his overdetailed. This inaction goes beyond mere negligence.

45. Rose told Deputy Warden Noble on numerous occasions that his sentence had been improperly computed. Rose explained that he had been sentenced to the balance of his original sentence, suspended upon service of two years. He also explained that because he violated only a general term of his probation, the most time that could be revoked was two years under Georgia law. Deputy Warden Noble was also aware of these facts by virtue of Rose having filed grievances, a habeas petition, and two 42 U.S.C. § 1983 lawsuits (that were converted to federal habeas petitions) to this effect.

46. It was apparent to Rose that Deputy Warden Noble subjectively understood Rose's complaint about his sentence computation and resulting overdetailed.

47. Deputy Warden Noble did nothing to whatsoever to attend to the significant risk of the violation of Rose's rights posed by his overdetailed. This inaction goes beyond mere negligence.

48. Rose told Warden Philbin on numerous occasions that his sentence had been improperly computed. Rose explained that he had been sentenced to the balance of his original sentence, suspended upon service of two years. He also explained that because he violated only a general term of his probation, the most time that could be revoked was two years under Georgia law. Warden Philbin was also aware of these facts by virtue of Rose having filed grievances, a

habeas petition (naming him as a defendant), and two 42 U.S.C. § 1983 lawsuits (that were converted to federal habeas petitions) to this effect.

49. It was apparent to Rose that Warden Philbin subjectively understood Rose's complaint about his sentence computation and resulting overdetention.

50. Warden Philbin did nothing to whatsoever to attend to the significant risk of the violation of Rose's rights posed by his overdetention. This inaction goes beyond mere negligence.

51. Rose told Warden Berry, who succeeded Warden Philbin as Warden of Austry State Prison, on numerous occasions that his sentence had been improperly computed. Rose explained that he had been sentenced to the balance of his original sentence, suspended upon service of two years. He also explained that because he violated only a general term of his probation, the most time that could be revoked was two years under Georgia law. Warden Berry was also aware of these facts by virtue of Rose having filed grievances, a habeas petition, and two 42 U.S.C. § 1983 lawsuits (that were converted to federal habeas petitions) to this effect.

52. It was apparent to Rose that Warden Berry subjectively understood Rose's complaint about his sentence computation and resulting overdetention.

53. Warden Berry did nothing to whatsoever to attend to the significant risk of the violation of Rose's rights posed by his overdetention. This inaction goes beyond mere negligence.

54. Defendants Jane and John Doe read Rose's sentence from the Superior Court which provided that he was to serve two years, with the balance of his sentence to be served on probation. Inexplicably, and with conduct that transgresses beyond gross negligence, they sentenced him to serve more than six years in custody. Defendants Jane and John Doe

disregarded multiple overlapping protections designed to prevent these kinds of errors from happening. The fact that these errors occurred despite so many safeguards is evidence of reckless conduct.

55. Defendants Jane and John Doe were subjectively aware that reckless sentencing computation would lead to Rose being detained illegally.

COUNT ONE

Negligent Performance of Ministerial Duties, pursuant to Georgia Tort Claims Act (against Defendant Georgia Department of Corrections)

56. Pursuant to O.C.G.A. §§ 50-21-23 and 50-21-24, the Georgia Department of Corrections is liable for the negligent performance of ministerial duties.

57. Georgia Department of Corrections officials breached the ministerial duties imposed on them by law, policy, and common sense involved in computing Rose's sentence.

58. The negligent breach of these ministerial duties caused Kevin Rose significant harms, losses, and injury.

59. The harms, losses, and injuries suffered by Rose were proximately caused by the negligence of Georgia Department of Corrections officials.

COUNT TWO

Overdetention under the Eighth and/or Fourteenth Amendment, pursuant to 42 U.S.C. § 1983 (against the individual Defendants)

60. This claim is brought against all Defendants sued in their individual capacity, including the Doe Defendants (collectively "the individual Defendants").

61. Continued detention without a valid sentence violates the Eighth and/or Fourteenth Amendments.

62. Rose clearly presented the individual Defendants with compelling evidence that his sentence had been miscalculated. Many of these Defendants recognized instantly that Rose was correct that his sentence had not been properly calculated.

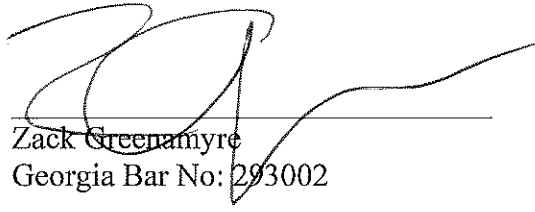
63. Upon understanding a significant risk of overdetention, the individual Defendants were obligated to make some kind of effort to investigate and resolve his complaints. The individual Defendants uniformly did not do anything whatsoever in the face of compelling proof that Rose was entitled to release. That conduct goes beyond mere negligence, representing deliberate indifference.

64. At the time of Rose's illegal detention, it was clearly established that officials that meet credible claims of overdetention with inaction that goes beyond mere negligence are liable for a prisoner's overdetention. *See West v. Tillman*, 496 F.3d 1321, 1327 (11th Cir. 2007); *Cannon v. Macon Cty.*, 1 F.3d 1558, 1564 (11th Cir. 1993); *McCurry v. Moore*, 242 F. Supp. 2d 1167, 1179–80 (N.D. Fla. 2002) (collecting cases and denying qualified immunity).

WHEREFORE, Plaintiff demands:

- a) That this Complaint be filed and served as provided by law;
- b) That he receive a judgment in his favor in the amount of the limit imposed by O.C.G.A. § 50-21-29, as his losses exceed that figure;
- c) That he be awarded damages in excess of any limit recited in O.C.G.A. § 50-21-29, as that is inapplicable to claims brought pursuant to 42 U.S.C. § 1983;
- d) That all costs of this action be cast upon the Defendant; and
- e) That Plaintiff receive such other and further relief as the Court deems just and proper.

Respectfully submitted this the 20th day of April, 2018.



Zack Greenamyre
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