(PC) Bobadilla v. Knight

2020 | Cited 0 times | E.D. California | July 20, 2020

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTHONY BOBADILLA,

Plaintiff, v. GARY KNIGHT,

Defendant.

No. 2:18-cv-1778 JAM KJN P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner, proceeding without counsel. On June 19, 2018, this action was removed from the Amador County Superior Court. Defendants motion for summary judgment is fully briefed. As discussed below, the undersigned recommends that defendants motion be granted on the ground that defendant is entitled to qualified immunity. I. Plaintiffs Verified Complaint Plaintiff alleges that on May 21, 2017, defendant Sgt. Knight retaliated against plaintiff -61.) Specifically, while locked in his cell at Mule Creek State Prison, plaintiff and other inmates verbally protested the beating of another inmate. Plaintiff verbally objected when he witnessed prison guards beat another inmate who was shackled by his ankles and his wrists, and as the guards dragged the inmate into the sally port, plaintiff witnessed a guard kick the inmate in the face like a soccer ball. Plaintiff yelled for Subsequently, plaintiff and his cell mate were extracted from their cell by threat of pepper spray, as was another inmate, and then their personal property was damaged and thrown away. They were handcuffed and taken to a temporary holding cell where plaintiff alleges that defendant Knight told them they were going to administrative segregation for investigation for conspiracy to commit murder on a peace officer. (ECF No. 1 at 13.) Subsequently, defendant Knight allegedly falsified charges in a rules violation report, charging plaintiff with inciting a riot in violation of California Code of Regulations, title 15 § 3005(d)(2), that resulted in plaintiff being housed in administrative segregation, losing his job, ultimately resulted in his adverse transfer to a different prison. The rules violation report was

subsequently dismissed based on a due process violation. (ECF No. 1 at 19, 46.)

Plaintiff also raises state tort claims against defendant Knight for defamation (slander and libel), false imprisonment, and malicious prosecution. (ECF No. 1 at 32, 37-42). Plaintiff affirmatively pled

compliance with applicable claims statutes. (ECF No. 1 at 8.) II. Legal Standard for Summary Judgment Summary judgment is appropriate when it is demonstrated that the standard set forth in judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to 1

Under summary judgment practice, the moving party always bears the initial responsibility of informing the district court of the basis depositions, answers to interrogatories, and admissions on file,

the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986) (quoting then-numbered Fed. R. Civ. P. 1

Federal Rule of Civil Procedure 56 was revised and rearranged effective December 10, 2010. only prove that there is an absence of evidence to support the non-moving partyNursing Home Pension Fund, Local 144 v. Oracle Corp. (In re Oracle Corp. Sec. Litig.), 627 F.3d 376, 387 (9th Cir. 2010) (citing Celotex Corp., 477 U.S. at 325); see also Fed. R. Civ. P. 56 Advisory

burden of production may rely on a showing that a party who does have the trial burden cannot produce admissible evidence to carry its bu should be entered, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that partys case, and on which that party will bear the burden of proof at trial. Celotex Corp., 477 U.S. at 322. s case Id. at 323. Consequently, if the moving party meets its initial responsibility, the burden then shifts to the opposing party to establish that a genuine issue as to any material fact actually exists. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). In attempting to establish the existence of such a factual dispute, the opposing party may not rely upon the allegations or denials of its pleadings, but is required to tender evidence of specific facts in the form of affidavits, and/or admissible discovery material in support of its contention that such a dispute exists. See Fed. R. Civ. P. 56(c); Matsushita, 475 U.S. at 586 n.11. The opposing party must demonstrate that the fact in contention is material, i.e., a fact that might affect the outcome of the suit under the governing law, see Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986); T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Assn, 809 F.2d 626, 630 (9th Cir. 1987), and that the dispute is genuine, i.e., the evidence is such that a reasonable jury could return a verdict for the nonmoving party, see Wool v. Tandem Computers, Inc., 818 F.2d 1433, 1436 (9th Cir. 1987). In the endeavor to establish the existence of a factual dispute, the opposing party need not establish dispute be shown to require a jury or judge to resolve the parties differing versions of the truth at T.W. Elec. Serv. urpose of summary judgment is to pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial. Matsushita, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e) advisory committees note on 1963

amendments). In resolving a summary judgment motion, the court examines the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any.

Fed. R. Civ. P. 56(c). The evidence of the opposing party is to be believed. See Anderson, 477 U.S. at 255. All reasonable inferences that may be drawn from the facts placed before the court must be drawn in favor of the opposing party. See Matsushita, 475 U.S. at 587. Nevertheless, inferences are not drawn out of the air, and it is the opposing partys obligation to produce a factual predicate from which the inference may be drawn. See Richards v. Nielsen Freight Lines, 602 F. Supp. 1224, 1244-45 (E.D. Cal. 1985), affd, 810 F.2d 898, 902 (9th Cir. 1987). Finally, to demonstrate a ge some metaphysical doubt as to the material facts. . . . Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial. Matsushita, 475 U.S. at 586 (citation omitted). By notice filed July 12, 2019 (ECF No. 31-3), plaintiff was advised of the requirements for opposing a motion brought pursuant to Rule 56 of the Federal Rules of Civil Procedure. See Rand v. Rowland, 154 F.3d 952, 957 (9th Cir. 1998) (en banc); Klingele v. Eikenberry, 849 F.2d 409 (9th Cir. 1988). III. The Civil Rights Act The Civil Rights Act under which this action was filed provides as follows:

Every person who, under color of [state law] . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution . . . shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See Monell v. Department of Social Servs., 436 U.S. 658 (1978) ; Rizzo v. Goode, 423 U.S. 362 (1976) (no affirmative link between the incidents of police misconduct and the adoption of any plan or policy demonstrating their authorization or approval of such misconduct) subjects another to the deprivation of a constitutional right, within the meaning of § 1983, if he does an affirmative act, participates in anothers affirmative acts or omits to perform an act which he is Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). IV. Undisputed Facts 2 1. Plaintiff is a state prisoner in the custody of the California Department of Corrections was housed 2. The CDCR is a Department of the State of California and therefore a public entity. CDCR has jurisdiction over MCSP. 3. During all times relevant herein, defendant Knight was a Correctional Sergeant at MCSP. Defendant Knights duties included the supervision and coordination of the work of assigned correctional officers in the safe custody, discipline, and welfare of inmates or parolees on an assigned watch or in a major area, as well as ensuring institutional and personnel safety, and informing others of events, verbally and written, such as authoring rules violation reports. 4. At about 12:31 p.m., Brian Jones; nonparty Officer Arellano, bleeding from his face, head and neck, was trying to

remove himself from the incident. 5. Numerous Code Responders attempted to physically restrain inmate Jones, who continued to assault Officer Arellano. 6. Defendant Knight used force to get inmate Jones to loosen his grip on Officer Arellano. Such force was effective, allowing defendant Knight to pull Officer Arellano from inmate Jones grip. ////

2 For purposes of summary judgment, the undersigned finds these facts are undisputed. 7. Defendant Knight escorted Officer Arellano out of the unit for medical attention and then returned to the scene

of the incident. 8. The Code Responders were using various forms of physical force to restrain inmate Jones. Inmate Jones was subsequently transported off the facility. 9. At about 12:31 p.m., plaintiff began yelling out of his cell door. (Pl.s Dep. at 30:10- 14; ECF No. 1, ¶ 20.) The parties dispute what words plaintiff yelled. 3 10. Plaintiff contends he had a free speech right to yell out of his cell door. Defendant Knight deemed plaintiffs actions a threat to the safety and security of the institution and staff. As a result, plaintiff was removed from his cell and escorted to the Facility A program office, along with other inmates. (Pl.s Dep. at 51, 53-57.) Plaintiff argues he was removed from his cell and placed in administrative segregation in retaliation for the words plaintiff yelled. 11. Defendant Knight informed nonparty Lieutenant Bona about plaintiffs conduct and the reason for plaintiffs removal from the facility. Plaintiff was not present during this exchange. (Pl.s Dep. at 71-72.) Lt. Bona issued plaintiff an administrative segregation placement notice. Plaintiff was then housed in administrative segregation. 12. Subsequently, defendant plaintiff on May 29, 2017, and charged plaintiff with inciting a riot. Plaintiff contends the RVR was issued in retaliation for plaintiff yelling out his cell door. 13. Defendant Knight was not the hearing officer at the hearing on plaintiffs RVR. (Pl.s Dep. at 99, 105.) ////

3 In his verified complaint, plaintiff states that he and numerous other inmates verbally protested the beating of inmate Jones. (ECF No. 1 at 11.) Specifically, plaintiff yelled for defendant

-2 at 49.) Defendant

Id.) 14. Defendant Knight was not part of the review process or institution classification committee that reviewed the need to retain plaintiff in administrative segregation. (Pl.s Dep. at 80-81, 87-88; ECF No. 1 at ¶¶ 29, 34-35, 37.) 15. Defendant Knight was not part of the institution classification committee that transferred plaintiff or the classification staff representative that endorsed the action. (Pl.s Dep. at 103-06; ECF No. 1 at ¶¶ 35, 46.) 16. Plaintiff does not contend that defendant Knight stole or took plaintiffs books or property. (Pl.s Dep. at 72, 76, 99.) 17. Plaintiffs first administrative grievance related to plaintiffs allegations herein was submitted on June 6, 2017. (ECF No. 1 at ¶ 32; Pl.s Dep. at 86.) V. Plaintiffs Retaliation Claims A. Legal Standards: First Amendment Retaliation

Pell v. Procunier, 417 U.S. 817, 822 (1974). It is well-settled that § 1983 provides a cause of action against prison officials who retaliate against inmates for exercising their constitutionally protected rights. Pratt v. Rowland officials are cogniz The elements of a prisoners First Amendment retaliation claim are: (1) adverse action by a state actor; (2) because of; (3) the prisoners protected conduct; (4) the adverse action chilled the prisoners exercise of First Amendment rights; and (5) the adverse action did not reasonably advance a legitimate correctional goal. See Brodheim v. Cry, 584 F.3d 1262, 1269 (9th Cir. 2012); Rhodes v. Robinson, 408 F.3d 559, 567- 68 (9th Cir. 2005). As to the third element, filing a complaint or grievance is constitutionally protected. Valandingham v. Bojorquez, 866 F.2d 1135, 1138 (9th Cir. 1989). As to the fifth element, the prisoner that the retaliatory action does not advance legitimate penological goals, such as preservin See Barnett v. Centoni, 31 F.3d 813, 815-16 (9th Cir. 1994) (per curiam). ///// B. Defendant moves for summary judgment on two grounds. First,

defendant argues that plaintiff cannot establish the necessary elements of a retaliation claim within the prison context because defendant did not retaliate against plaintiff, and plaintiff was not engaged in protected conduct, and def which an attempted murder on a correctional officer occurred, furthered legitimate correctional

goals -- ensuring order and preventing additional violence against staff. Because the alleged adverse actions allegedly Rhodes, 408 F.3d at 567, is unavailing because in Rhodes the court found an inmate had a right to file and pursue prison grievances and civil litigation, not to verbally criticize or tell a prison sergeant how to do his job. (ECF No. 31-1 at 7.) But even assuming plaintiff could demonstrate the initial elements of a retaliation claim, allowing inmates to verbally criticize or yell during the assault of a correctional officer and use of force incident could further agitate an already volatile situation and would not be prudent correctional management. Moreover, processes were available for plaintiff to challenge his placement in administrative segregation and the RVR, and his subsequent challenges were not addressed by defendant, but by prison staff not involved in the incident at issue here. Second, defendant is entitled to qualified immunity because it is not clearly established that in the prison context verbal complaints can form the basis of a retaliation claim, and case law does not address an incident where an inmate yelled at prison staff. Defendant argues that in both Ahmed v. Ringler, No. 2:13-cv-1050 MCE DAD P, 2015 WL 502855 (E.D. Cal. Feb. 5, 2015), and Christ v. Blackwell, No. 2:10-cv-0760-EFB P, 2016 WL 4161129 (E.D. Cal. Aug. 3, 2016), . (ECF No. 31-1 at o date, neither the Supreme Court nor the Ninth Circuit has held that mere oral complaints Ahmed, 2015 WL 502855, at *7 (noting district court cases have found both that an oral complaint can be the basis for a retaliation claim and the opposite); see also Christ, 2016 WL 4161129, at *8-9. Because there is no robust consensus of cases finding that an oral complaint by a prisoner can form the basis of a retaliation claim, d allegations, defendant violated no clearly established law and is entitled to qualified immunity. C. Opposition Plaintiff counters that defendant handcuffed plaintiff and placed him in administrative segregation, then falsified an RVR, solely in retaliation for plaintiff exercising his right to free speech, relying on Farrow v. West forbids prison officials from retal (ECF No. 43 at 5.) The false RVR resulted in plaintiff losing his job, legal books and materials,

and his ultimate adverse transfer. Plaintiff denies defendant is entitled to qualified immunity, arguing that it was clearly quoting Pratt, 65 F.3d at 806, and also relying on Rhodes, 408 F.3d at 567-68, and Brodheim, 584

F.3d at 1269. (ECF No. 43 at 7-9.) Plaintiff points to Williams v. Amay, 1:17-cv-1332 AWI EPG, 2018 WL 4207027 (E.D. Cal. Sept. 4, 2018), where the magistrate judge discussed relevant district court district and the other districts in California had placed beyond debate in early 2017 that verbal Id. at *9. Plaintiff then focuses on three Eastern District of California cases included in the review of cases evaluated by the magistrate judge in Williams. 2018 WL 4207027, at *7, arguing verbal protests were protected under the First Amendment. (ECF No. 43 at 9-11.) D. Defendant contends that plaintiff fails to demonstrate that yelling at correctional staff during a use of force incident on May 21, 2017, where a correctional officer was assaulted and seriously inju related to legitimate safety concerns. P

Rhodes, 408 F.3d at 567, is

6, 2017, and therefore based solely on verbal complaints. //// Defendant contends that even if plaintiff could establish that yelling was protected conduct, plaintiff fails to show that placing him in administrative segregation were not to preserve institutional security, a legitimate

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46 at 2.) Also, plaintiff fails to demonstrate that defendant was sufficiently connected or linked to the alleged adverse actions that occurred after plaintiff was placed in administrative segregation. Further, defendant argues that he is entitled to qualified immunity because it is not clearly established that verbal complaints by a prisoner are protected conduct, even in the retaliation context. (ECF No. 46 at 3- Williams is unavailing because the district Williams v. Amay, 2019 WL 6728054 (E.D. Cal. 2018). In light of and the lack of Supreme Court or Ninth Circuit precedents, defendant contends that the issue presented in this case is not clearly established or beyond debate, and defendant should be granted qualified immunity. VI. Qualified Immunity As discussed below, the undersigned is persuaded that there is no clearly established concerning matters not related to inmate grievances or litigation constitute protected conduct. Therefore, the

claim, because defendant is entitled to qualified immunity. A. Legal Standards Qualified immunity applies when an officials conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. White v. Pauly, 137 S. Ct. 548, 551 (2017). Officers are entitled to qualified immunity under § 1983 unless (1) the officers violate a federal a federal statutory or constitutional right, and (2) the District of Columbia v. Wesby, 138 S. Ct. 577, 589 (2018); White, 137 S. Ct. at 551. the statutory or constitutional question was beyond debate, such that every reasonable official would understand that what he is doing is unlawful. See Wesby, 138 S. Ct. at 589; Vos v. City of Newport Beach, 892 F.3d 1024, 1035 (9th Cir. 2018). Wesby, 138 S. Ct. at 589 (citing Malley v. Briggs, 475 U.S. 335, 341 (1986)). must be dictated by controlling authority or by a robust consensus of cases of persuasive

authority. Wesby, 138 S. Ct. at 589; see also Perez v. City of Roseville, 882 F.3d 843, 856-57 (9th Cir. 2018) (noting that Ninth Circuit precedent is sufficient to meet the clearly established prong of qualified immunity); Hamby v. Hammond, 821 F.3d 1085, 1095 (9th Cir. 2016) -- unlike those from the courts of appeals -- do not necessarily settle In examining

Wesby, 138 S. Ct. at 590; Kisela v. Hughes, 138 S. Ct. 1148, 1152 (2018). The key question is whether the violative nature of particular conduct is clearly established in the specific context of the case. Vos, 892 F.3d at 1035 (quoting Mullenix v. Luna, 136 S. Ct. 305, 308 (2015)). Although it is not necessary to identify a case that

similar circumstances was held to have violated federal right. Wesby, 138 U.S. at 577; Vos, 892 F.3d at

1035; Felarca v. Birgeneau, 891 F.3d 809, 822 (9th Cir. 2018); Shafer v. City of Santa Barbara, 868 F.3d 1110, 1118 (9th Cir. 2017). B. Discussion Plaintiff initially argues that defendant is not entitled to qualified immunity because the prohibition against retaliatory punishment is clearly established law. Plaintiff is correct that, generally speaking, retaliation against prisoners for engaging in protected conduct is clearly established. The Ninth Circuit cases relied upon by plaintiff involved or were related to the filing of written grievances. (ECF No. 43 at 8.) Importantly, t his allegations, taken as true, do not involve the filing of administrative grievances or lawsuits, but rather are solely based on against someone else, not in the context of threatening to file a grievance or lawsuit, or alleged improper action toward plaintiff. 4 Plaintiff relies on Farrow v. West, 320 F.3d 1235, 1248 (11th Cir. 2003), to support his contention that the First Amendment forbids prison officials from retaliating against prisoners for exercising the right to free speech. (ECF No. 43 at 5.) First, this court is not bound by rulings from the Eleventh Circuit. Rather, as noted above, only rulings by the U.S. Supreme Court and the Ninth Circuit provide controlling authority clearly establishing the alleged constitutional violation. Wesby, 138 S. Ct. at 589; Perez, 882 F.3d at 856-57. the sup Torres v. Arellano, No. 1:15-cv-0575 DAD MJS (PC), 2017 WL 1355823, at *13 (E.D. Cal. Mar. 24, 2017) (collecting cases). Second, even assuming Farrow had persuasive value, which it would not, 5 is too broad to define the constitutional right at issue as required by current Supreme Court

authority. See Wesby, 138 S. Ct. at 590. Third, the facts of this case do not constitute one of the

point is necessary. See Wesby, 138 S. Ct. at 590. In the absence of cases that are similar to the facts in this case, defendant is entitled to qualified immunity because //// 4 For example, on October 6, 2017, the Ninth Circuit denied qualified immunity as it related to that the form of the complaints -- even if verbal, let alone, as here, written -- is of no constitutional significance, and that threats to sue fall within the purview of the constitutionally Entler v. Gregoire, 872 F.3d 1031, 1039 (9th Cir. 2017), citing Hargis v. Foster, 312 F.3d 404, 411 (9th Cir. 2002).) 5 In Farrow clearly established because the defendants did not raise such issue in the district court, which only addressed whether there had been a constitutional violation. Id. n.22. Rather, the appellate court found that summary judgment was properly granted to defendant Nurse Shipman because Farrow Farrow, at 1248-49. speech See id. at 589-90; White, 137 S. Ct. at 551 Further, plaintiff relies on the findings and recommendations issued in Williams v. Amay, 1:17-cv-1332 AWI EPG, 2018 WL 4207027 (E.D. Cal. Sept. 4, 2018), 6

and district court cases cited therein. The magistrate judge evaluated district court cases in California, and concluded purposes of a retaliation claim. Id. at *9. However, as argued by defendant, the district court

declined to adopt such findings and recommendations. Williams v. Amay, 2019 WL 6728054 (E.D. Cal. 2018). Following de novo review, the district court held, inter alia, that Williams failed to state a plausible retaliation claim, but even if he did, the defendants were entitled to

place would understand that ment before and after plaintiff engaged in First was unlawful conduct.

Williams, at *7. It is apparent from such ruling that the district court was not persuaded that a robust consensus of cases of persuasive authority supported a finding that the First Amendment right to free speech by a prisoner was clearly established. Similarly, in light of more recent Supreme Court authority defining the lder district court cases is also unavailing. Here, whether or not plaintiff has established a violation of his First Amendment rights,

clearly established at the time of the May 21, 2017 incident. that he was verbally protesting how correctional officers were using force in their response to

another and defendant removed plaintiff from his cell and placed him in administrative segregation and then authored an allegedly false RVR, the

6 In Williams, the prisoner identified the protected conduct as (1) requesting Wellbutrin; (2) explaining his past experience with other antidepressants to the defendant doctor; and (3) telling the doctor what 15 C.C.R. § 3364.1(a)(5)(G) stated. Williams, 2019 WL 6728054, at *6. Thus, the Williams case, like the instant case, had nothing to do with the filing of grievances, including a verbal threat to file one. undersigned has located no case, and plaintiff has not cited one, that would put a reasonable speech under these circumstances. Thus, qualified immunity is appropriate because plaintiff has

not shown that a reasonable official in defendants place would understand that his conduct was unlawful. VII. Plaintiffs State Law Claims Based on the above recommendations, this court declines to exercise supplemental jurisdiction over plaintiffs state law claims. See 28 U.S.C. § 1367(c)(3); Ove v. Gwinn, 264 F.3d 817, 826 (9th Cir. 2001). The undersigned recommends that plaintiffs state law claims be dismissed without prejudice. VIII. Conclusion

Accordingly, IT IS HEREBY RECOMMENDED that: 1. Defendants motion for summary judgment (ECF No. 31) be granted on the ground that defendant is entitled to qualified immunity in connection with plaintiffs retaliation claim;

2. The court should decline to exercise supplemental jurisdiction over plaintiffs state law claims, which should be dismissed without prejudice; and

3. This action be terminated. These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within thirty days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned Magistrate Judges Findings and R filed and served within twenty-one days after service of the objections. The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Courts order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991). Dated: July 20, 2020

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