

FILED - MQ

November 9, 2017 9:34 AM

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

CLERK OF COURT
U.S. DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
BY: mlc/ Scanned by **11-9-17**

JONATHAN STEWART RODEN,
Plaintiff,

Case No.: **2:17-cv-188**
Paul L. Maloney, US District Judge
Timothy P. Greeley, US Magistrate Judge

V.

Judge:

DON PLONT AND TRINITY FOOD
SERVICE GROUPS, IN INDIVIDUAL
CAPACITY, JOINTLY, AND SEVERELY.

JURY DEMAND ENDORSED

Defendants.

COMPLAINT UNDER 42 USC § 1983

I INTRODUCTION

1. Plaintiff, Jonathan Stewart Roden, a prisoner with the Michigan Department of Corrections, brings this pro se civil rights action under 42 USC § 1983 to remedy the deprivation of rights secured by the First and Fourteenth Amendments of the United States Constitution and Michigan State Law. This complaint sets forth First Amendment retaliation claims and Eighth Amendment cruel and unusual punishment claims under 42 USC § 1983 against Trinity Food Service and Food Steward Don Plont.

II JURISDICTION AND VENUE

2. This Court has jurisdiction over the claims in this complaint pursuant to 28 USC § 1331 and 1343(a)(3),(a)(4), which confers original

jurisdiction on the United States District Courts in suits to redress the deprivation of rights, privileges, and immunities as set forth herein. This Court has pendent and supplemental jurisdiction over state law claims under 28 USC § 1375(a).

3. Venue lies within this District pursuant to 28 USC § 1391(b).

III PARTIES

4. Plaintiff, Jonathan Stewart Roden (Plaintiff Roden), a person of full age of majority, was at all times relevant a citizen of the United States, and a resident under the custody and control of the Michigan department of Corrections (MDOC) at the Kinross Correctional Facility (KCF), located at 4533 West Industrial Park Drive, Kincheloe, Michigan, 49788, in the County of Chippewa. Plaintiff is presently housed at KCF.

5. Defendant, Trinity Food Service Group, a corporation in the United States, operating in the State of Michigan, County of Chippewa, who at all times relevant was an agent of the State of Michigan with the MDOC at KCF as Food Service Provider.

6. Defendant, Don Plont (Defendant Plont), a person of full age of majority, upon information and belief is a citizen of the United States, and a resident of the County of Chippewa, State of Michigan, who at all times relevant was an employee subcontractor of the State of Michigan working for the MDOC through Trinity Food Service Group, as a Food Steward at KCF. He is sued in his individual capacity.

FACTUAL ALLEGATIONS

7. Plaintiff Jonathan Stewart Roden is currently serving a 20-82 year sentence for robbery. Plaintiff transferred to the Kinross Correctional Facility in May of 2016 and has been housed there since.

8. On or about August 30, 2017, Plaintiff Roden discovered a maggot crawling out of the banana that was served to him at dinner between 1715 and 1730.

9. Plaintiff immediately notified Chow Hall Sergeant Beauliu showing him the tray and banana. Sergeant Beauliu instructed Plaintiff, "Go get a new one." Plaintiff replied, "Shouldn't they stop the line?" The sergeant stated, "Go tell him," and pointed to Food Steward Plont.

10. Plaintiff approached Food Steward Plont and Line Officer Templeton and stated, "There are maggots or worms crawling out of my banana." Plont took the banana, gave a cursory inspection, and stated, "No there's not." Plont then put the banana back on the tray.

11. Plaintiff picked the banana back up, pointed directly to the maggots and larva and stated, "Get a supervisor." Plont took the banana, rubbed his fingers across the larva and stated, "That's just goo. Go sit down or I'm writing you a creating a disturbance."

12. Plaintiff placed his ID card on the counter then turned toward Line Officer Templeton and stated, "Do you not see that maggot?" (Plaintiff pointed to a crawling maggot.) Officer Templeton grunted, "Eww."

13. Food Steward Plont took the banana out of Plaintiff's hand and stated, "Oh yeah, I see. I must have looked at the wrong spot. You can get a new tray." Plont instructed the workers to pull all the bananas and serve

apples. (The line was not sanitized.)

14. While in line to receive a new tray Plaintiff asked line workers, "Why aren't you sanitizing?" and "What is the Food Steward's name?" (Plont was not wearing a name tag.) Plont interrupted by asking, "Why? You got a new tray. You just need to leave it alone," Plaintiff replied, "I don't need to leave it alone. I'm writing this up."

15. Defendant stated, "That's it. You're getting a ticket. Give me your ID," Plaintiff complied.

16. Defendant Plont wrote Plaintiff a false Class II Discipline Report claiming Roden was creating a disturbance in the chow hall:

"Prisoner Roden 319782 G 146 approached me to make a complaint about his food, while talking with him he became loud causing others to stop what they were doing and look in his direction to see what the commotion was. This also caused chow lines to slow down as inmates in the serving line were watching him instead of grabbing their trays and taking a seat."

This farcical discipline report was intended to quail Roden's further complaint, blame Roden for the chow hall line stoppage, and as a punishment for persisting with the complaint. (See Exhibit A)

17. On September 7, 2017, Plaintiff had a hearing for the false discipline report. The Hearing Officer adjourned the hearing to view the camera and speak to staff witnesses. On September 13, 2017, the hearing resumed and Hearing Officer T. Menard found Plaintiff Roden not guilty. Hearing Officer Menard reviewed the camera, officers' statements, e-mails between Sergeant Beaulie and Business Office/Contract Manager Kathey Dumback, witness affidavits, and Food Service Event Report. Menard then ruled:

"Inmate had simply had a bad banana that had something on it, he requested a replacement by showing the Sgt., [and] the Food Steward [Plont]. No disturbance was observed." (See Exhibit A)

18. On or about September 14, 2017, Plaintiff wrote a grievance on

Trinity Food Service and Food Steward Plont for violation of his First, Eighth, and Fourteenth Amendment Rights for retaliating against, impeding, and suppressing Plaintiff's legitimate complaint about maggots in his food and the Food Steward's dereliction of duty in failing/refusing to sanitize the line. The grievance was denied as non-grievable. This denial was upheld by Warden Duncan MacLaren. This denial was appealed to all three steps of the grievance process (grievance # KCF 1709 0772 27A). (See Exhibit B)

Plaintiff also wrote a grievance on Sergeant Baulieu for dereliction of duty in failing/refusing to take a picture of the maggot infested banana. Trinity AFSD S. Jones responded, "There is no policy in regards to a picture being taken." This was also appealed to all three steps in the grievance process (grievance # KCF 1709 0731 9E), (See Exhibit B)

19. Plaintiff specifically and continuously requested the chow hall cameras from August 30, 2017, 1710 to 1745, to be preserved:

- September 4, 2017: Grievance on Sergeant Beaulieu
- September 5, 2017: Misconduct Statement
- September 7, 2017: During Misconduct Hearing
- September 14, 2017: Grievance on Trinity and Plont
- September 20, 2017: Preservation Request to Warden, Litigation Coordinator, MDOC Office of Legal Affairs, and Trinity Food Service Regional Director

Plaintiff's family also called MDOC Central Office and the Detroit Free Press attempting to have the video preserved.

CAUSE OF ACTIONS

I

PLAINTIFF AGAINST DEFENDANTS DON PLONT AND TRINITY FOOD SERVICE GROUP STATES DEFENDANTS VIOLATED THE UNITED STATES CONSTITUTION FIRST AND FOURTEENTH AMENDMENTS BY RETALIATING AGAINST PLAINTIFF FOR COMPLAINING ABOUT MAGGOTS IN HIS FOOD (42 USC § 1983).

20. Plaintiff incorporates paragraphs 1 through 19 as if fully restated and realleged.

21. At all times relevant pursuant to the First Amendment to the United States Constitution as made applicable to the states through the Fourteenth Amendment and Federal Law, Plaintiff enjoyed the clearly established right to be free from retaliation for exercising his Constitutional Right to petition the MDOC for redress of non-frivolous institutional grievances.

22. At all times relevant both Defendants were acting within the scope of their authority and duties under the color of law, and therefore owed Plaintiff the duty to act with reasonable care and in his best interest so as to not violate his clearly established Constitutional Rights.

23. At all times relevant Defendant's conduct, specifically writing the false misconduct because Plaintiff asked for Defendant's name and supervisor, seeking redress for maggots in his banana, and Defendant's failure/refusal to sanitize the serving line. The Defendant acted with malice, recklessness, and/or a callous, deliberate, and total disregard for Plaintiff's rights to be free from retaliation.

24. At all times relevant the actions of the Defendants were contrary to MDOC Policy Directives, ServeSafe Operating Procedure, Plaintiff's Constitutional Rights, and clearly established Law where the action was adverse in nature capable of deterring a person of ordinary firmness from persisting in this exercise of protected conduct and were motivated, at least

in part, by Plaintiff's protected conduct.

25. As a direct and proximate result of Defendant's conduct Plaintiff suffered an injury where he was issued a false disciplinary charge of creating a disturbance in the chow hall, subjecting Plaintiff to the risk of significant sanctions. Plaintiff was intimidated from persisting with the complaint and thereby forced to eat food from the unsanitized and contaminated line. Plaintiff was blamed for food line stoppage (by Defendant) in an attempt to cover up an infested line. Had it not been for Defendant's conduct Plaintiff would not have received a false disciplinary charge, the maggots would have been properly recorded, and the line would have been sanitized. Plaintiff therefore states a viable claim for compensatory, punitive, emotional, and mental damages pursuant to 42 USC § 1983, together with costs, interest, and applicable fees that may occur during the pendency of this action.

26. At all times relevant to this action Defendants were unreasonable and violated Plaintiff's Constitutional Rights of which Defendants were aware or should have been aware.

RELIEF REQUESTED

27. Pursuant to the above claim, Plaintiff seeks judgment from this Court that Defendants have violated his clearly established Constitutional Rights and Plaintiff seeks compensatory damages in the amount which is fair, just, and reasonable together with interest, in addition to punitive, presumed nominal and exemplary damages, together with all costs and fees associated with this action. Plaintiff also requests damages for mental and emotional distress.

PREVIOUS ACTION

Jonathan Roden V. Floyd, et al., USDC EDMI No. 2:16-cv-11208 (April 4, 2016) filed.

Jonathan Roden V. Slater, et al., USDC WDMI No. 2:16-cv-00188.

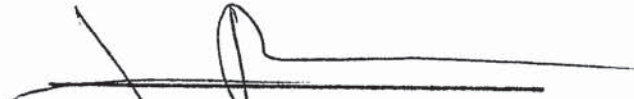
DEMAND FOR JURY

I, Jonathan Stewart Roden, the undersigned, hereby declare under the penalty of perjury that the foregoing is true and correct to the best of my personal knowledge, information, and belief.

Respectfully submitted,

Date:

11-1-17



Jonathan Stewart Roden #319782
Plaintiff in Pro Per
Kinross Correctional Facility
4533 West Industrial Park Drive
Kincheloe, MI 49788

CHRIS MORTENSEN, NOTARY PUBLIC
MACKINAC COUNTY, STATE OF MICHIGAN
COMMISSION EXPIRES JULY 13, 2020
ACTING IN THE COUNTY OF CHIPPEWA



11-1-17

