UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

WESLEY VAUGHN,

Plaintiff,

-against-

02-CV-1512

JAMES A. NICHOLS, Deputy Superintendent of Programs (MID-STATE); GLENN S. GOORD, Commissioner (D.O.C.S.); RICHARD PROSSER, Maintenance Supervisor (MID-STATE); MR. ABBIS, Vocational Supervisor (MID-STATE); WILFREDO BATISTA, First Deputy Superintendent (MID-STATE); DONALD SELSKY, Director of Special Housing/Inmate Disciplinary Programs, (D.O.C.S.); in their individual capacities as personnel of the Department of Correctional Services (D.O.C.S.)

LES/GJD

Defendants.

DEFENDANTS' PRETRIAL MEMORANDUM OF LAW

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Date: October 23, 2006

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Preliminary Statement

In the complaint, plaintiff, a state prisoner, brings two causes of action which are retaliation claims (Counts I and II). In his first retaliation claim, plaintiff alleges he was removed from his prison job as a law clerk in April, 2002 for giving legal assistance to an inmate for a prison disciplinary hearing at Mid-State Correctional Facility ("Mid-State"). In his second retaliation claim, plaintiff alleges he received a false misbehavior report in late May, 2002 at Mid-State in retaliation for filing grievances challenging his removal from the law clerk position. (Count III, a procedural due process claim concerning a prison disciplinary hearing, and Count IV, an equal protection claim, were dismissed by the Court in response to defendants' motion for summary judgment. Dkt. 31.)

POINT I

DEFENDANT IS ENTITLED TO DISMISSAL UNDER RULE 50 (A) OF THE RETALIATION CLAIMS

To state a claim for retaliation, plaintiff "must advance non-conclusory allegations establishing: (1) that the speech or conduct at issue was protected, (2) that the defendant took adverse action against the plaintiff, and (3) that there was a causal connection between the protected speech and the adverse action." Morales v. Mackalm, 278 F.3d 126, 131 (2d Cir. 2002) (quoting Dawes v. Walker, 239 F.3d 489, 492 (2d Cir. 2001)). If plaintiff can make this showing, his claim may still not survive if defendants can show by a preponderance of the evidence that they would have taken the same actions " 'even in the absence of the protected conduct.' " Graham v. Henderson, 89 F.3d 75, 79 (2d Cir. 1996) (quoting Mount Healthy Sch. Dist. v. Doyle, 429 U.S. 274, 287, 97 S. Ct. 568 (1977)). "Thus, if taken for both proper and improper reasons, state action may be upheld if the action would have been taken based on the proper reasons alone." Id. (citing Lowrance v. Achtyl, 20 F.3d 529, 535 (2d Cir. 1994). Finally, since prisoner claims of retaliation are prone to abuse, they

are viewed with skepticism. See Flaherty v. Coughlin, 713 F.2d 10, 13 (2d Cir. 1983) (noting that "claims by prisoners that particular administrative decisions have been made for retaliatory purposes are prone to abuse").

As to plaintiff's first claim of retaliation, defendants will establish at trial that plaintiff was not removed from his law clerk position in the prison law library because he was providing legal advice to other inmates in their disciplinary hearings. Instead, the evidence will show that plaintiff was removed from his position because of suspicions that he was using the library's copy machine to assist an inmate gambling ring operating inside the prison.

As to plaintiff's second claim of retaliation, defendants will establish at trial that defendant Abbis issued a misbehavior report to plaintiff for assaulting another inmate based on evidence from a confidential informant as well as his own investigation. In addition, plaintiff was found guilty at a prison disciplinary hearing and that result was affirmed on administrative appeal. Thus, there is no evidence to support plaintiff's claim of retaliation.

Accordingly, plaintiff's two claims of retaliation should be dismissed pursuant to motion under Rule 50 (a).

CONCLUSION

FOR THE REASONS SET FORTH ABOVE, JUDGMENT SHOULD BE GRANTED IN FAVOR OF THE DEFENDANTS.

Dated: Albany, NY
October 23, 2006

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