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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

CHET ADKINS,
Plaintiff,
v.
ALLEN COOPER, et al.,
Defendant.

No. CIV 98-2316-PHX-BHC
ORDER

I. Background

Plaintiff Chet Adkins is an Alaskan prisoner who is held at the Central Arizona Detention Center ("CADC") operated by Corrections Corporation of America, Inc. ("CCA"). On October 26, 1998, and apparently thereafter, CCA refused to deliver copies of adult-oriented publications to Plaintiff based on obscenity and pursuant to Alaskan prison statutes or regulations.

Plaintiff filed a grievance in which he asserted that Allen Cooper, as the Director of the Alaska Department of Corrections ("ADC"), could not delegate the authority to screen prisoner mail for obscene materials to a private corporation, i.e., CCA. (Ex. A to Motion for Summary Judgment). Plaintiff's grievance was denied and he thereafter filed this action.

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1 Plaintiff alleges that Cooper cannot delegate the authority to screen prisoner mail to a private
2 corporation in another state. Plaintiff expressly disavows the intent to challenge the criteria
3 for evaluating whether publications are obscene.

4 Pending are the parties' cross-motions for summary judgment. (Dkts. 17, 35 and 39).

5 II. Standard for Summary Judgment

6 Summary judgment is appropriate when the movant shows "there is no genuine issue
7 as to any material fact and that the moving party is entitled to judgment as a matter of law."
8 Fed. R. Civ. P. 56(c). "One of the principal purposes of the summary judgment rules is to
9 isolate and dispose of factually unsupported claims." Celotex Corp. v. Catrett, 477 U.S.
10 317, 323-24 (1986). Substantive law determines which facts are material. "Only disputes
11 over facts that might affect the outcome of the suit under the governing law will properly
12 preclude the entry of summary judgment." Anderson v. Liberty Lobby, 477 U.S. 242, 249
13 (1986).

14 The dispute must also be genuine. A dispute about a material fact is genuine if "the
15 evidence is such that a reasonable jury could return a verdict for the non-moving party." Id.
16 at 249. There is no issue for trial unless there is sufficient evidence favoring the non-
17 moving party. If the evidence is merely colorable or is not significantly probative, summary
18 judgment may be granted. Id. at 249-50. In a civil case, the question is:

19 whether a fair-minded jury could return a verdict for the plaintiff on the
20 evidence presented. The mere existence of a scintilla of evidence in support of
21 the plaintiff's position will be insufficient; there must be evidence on which
22 the jury could reasonably find for the plaintiff.

23 Id. at 252.

24 The moving party who has the burden of proof on the issue at trial must establish all
25 of the essential elements of the claim or defense for the court to find that the moving party is
26 entitled to judgment as a matter of law. Fontenot v. Upjohn, 780 F.2d 1190, 1194 (5th Cir.

1 1986); Calderone v. United States, 799 F.2d 254, 259 (6th Cir. 1986). However, the moving
2 party need not disprove matters on which the opponent has the burden of proof at trial.
3 Celotex, 477 U.S. at 322. Thus, summary judgment is proper if the non-moving party fails
4 to make a showing sufficient to establish the existence of an essential element of their case
5 on which they will bear the burden of proof at trial. Id. See also, High Tech Gays v.
6 Defense Indus. Sec. Clearance Office, 895 F.2d 563 (9th Cir. 1990).

7 Plaintiff alleges that Cooper can not constitutionally delegate his authority to monitor
8 the possession of obscene materials to persons outside Alaska and that such delegation
9 resulted in a violation of his First Amendment rights. He argues that Sarnberg, Luna, Richie
10 and CCA can not constitutionally enforce or apply Alaska regulations restricting his access
11 to obscene materials in Arizona.

12 Under Alaska law, the Commissioner of Corrections "shall (1) establish, maintain,
13 operate, and control correctional facilities suitable for the custody, care, and discipline of
14 persons charged or convicted of offenses against the state or held under authority of state
15 law; each correctional facility operated by the state shall be established, maintained,
16 operated, and controlled in a manner that is consistent with AS 33.30.015 . . ." Alaska Stat.
17 § 33.30.011(1)(Lexis 1997). Among other things, the Commissioner "may not" allow a
18 prisoner in a state correctional facility operated by the state to "possess printed or
19 photographic material that (i) is obscene as defined by the commissioner . . ." in regulations
20 promulgated by him. Alaska Stat. § 33.30.015(a)(3)(C)(1997). Furthermore, the
21 Commissioner:

22 may determine whether the provisions of [§ 33.30.015(a)] shall apply to
23 correctional facilities that are not operated by the state and may negotiate with
24 a provider of services for the detention and confinement of persons held under
25 authority of state law under contract or agreement whether the living
26 conditions set out in [§ 33.30.015(a)] shall apply to persons held under
authority of state law at a facility operated under contract or agreement.

1 Alaska Stat. § 33.30.015(b)(1997). The Commissioner is also required to adopt regulations
2 to implement § 33.30.015. Alaska Stat. § 33.30.021 (1997). The Commissioner "may adopt
3 regulations to carry out or assist in carrying out the powers and duties of the department."
4 Alaska Stat. § 44.28.030 (1984).

5 In addition to the foregoing, the Commissioner:

6 shall determine the availability of state correctional facilities suitable for the
7 detention and confinement of persons held under authority of state law If
8 the commissioner determines that suitable state correctional facilities are not
9 available, the commissioner may enter into an agreement with a public or
10 private agency to provide necessary facilities. . . . Correctional facilities
11 provided through agreement with a private agency must be located in this state
12 unless the commissioner finds in writing that (1) there is no other reasonable
13 alternative for detention in the state; and (2) the agreement is necessary
14 because of health or security considerations involving a particular prisoner or
15 class or prisoners, or because an emergency of prisoner overcrowding is
16 imminent. The commissioner may not enter into an agreement with an agency
17 unable to provide a degree of custody, care, and discipline similar to that
18 required by the laws of this state.

13 Alaska Stat. § 33.30.031(a)(1997).

14 Regardless whether the delegation of authority to monitor the receipt and possession
15 of obscene materials rises to the level of a constitutional violation, the Commissioner has
16 been granted express authority to delegate those responsibilities. There is no evidence that
17 such authority has been abused. Plaintiff does not argue and there is no evidence that such
18 authority was improperly delegated to Cooper as Alaska's Director of Institutions or that
19 Cooper lacked the authority to delegate that authority to Samberg and Luna under Alaska
20 law.

21 Plaintiff asserts that he has been incarcerated in Arizona since 1995 and has paid
22 tuition for courses offered by the Central Arizona College and thereby claims residence in
23 Arizona on that basis. He argues that Alaska cannot have its regulations enforced or applied
24 to him in Arizona, *i.e.*, that such enforcement or application is extraterritorial and not
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1 sanctioned under Arizona law. Plaintiff is mistaken.

2 Sections 41-1681-84 of the Arizona Revised Statutes governs the operation of private
3 prisons in Arizona. A private prison is one that is privately owned and that does not
4 contract exclusively with the Arizona Department of Corrections. Ariz. Rev. St. § 41-1681
5 (1997). There is no dispute that CCA is a private prison within the definition of the statute.
6 Sections 41-1682-83 set forth the requirements to operate a private prison in Arizona.
7 Section 41-1684 requires private prison contractors to transfer or return prisoners sentenced
8 in other states to those states prior to release. There is nothing under Arizona law
9 precluding the enforcement of another state's correctional regulations so long as those
10 regulations conform to constitutional and state law requirements. There is no evidence that
11 Alaska's restriction on the receipt or possession of obscene materials by persons serving
12 sentences pursuant to Alaska law in Arizona in any way violates the federal Constitution or
13 Arizona law.

14 Finally, the delegation of executive authority by an executive agency to a private
15 party does not violate due process if the state executive agency retains final reviewing
16 authority over the delegated power. See R.H. Johnson & Co. v. S.E.C., 198 F.2d 690, 695
17 (2d Cir. 1952). See also, West v. Atkins, 487 U.S. 42, 55 (1988)(delegation of inmate
18 medical care by state to private physician); Skelton v. PRI-COR, Inc., 963 F.2d 100, 102
19 (6th Cir. 1991); Giron v. Corrections Corp. of America, 14 F. Supp.2d 1245 (D.N.M. 1998) (
20 delegation by state to private corporation); Blumel v. Mylander, 919 F. Supp. 423,427 (M.D.
21 Fla. 1996). Plaintiff acknowledges that the Alaska Department of Corrections retained
22 ultimate authority over his grievances regarding the screening of his mail.

23 For the reasons discussed herein, Defendants' motions for summary judgment will be
24 granted. Plaintiff's motion for summary judgment will be denied.

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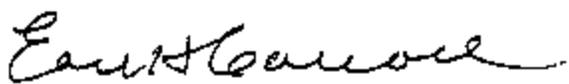
The Court being fully advised,

IT IS ORDERED granting Defendants' motions for summary judgment. (Dkt. 17 and 39).

IT IS FURTHER ORDERED denying Plaintiff's motion for summary judgment. (Dkt. 35).

IT IS FURTHER ORDERED that judgment for Defendants be entered and that Plaintiff take nothing by this action.

DATED this 30 day of March, 2000.



EARL H. CARROLL
United States District Judge