

STATE OF VERMONT

SUPERIOR COURT  
Washington Unit

CIVIL DIVISION  
No. 21-CV-2968

---

MICHAEL ASHFORD,  
Plaintiff,

v.

VERMONT DEPARTMENT OF  
CORRECTIONS,  
Defendant.

---

RULING ON THE STATE'S MOTION TO DISMISS

Plaintiff Michael Ashford claims that, while incarcerated in Vermont in the early days of the Covid-19 pandemic, he tested positive for the virus and was quarantined for 10 days. He claims that the “quarantine” consisted of being placed in solitary confinement, which exacted a serious emotional toll on him. He further alleges that he was symptom-free throughout, his test thus may have been a “false-positive,” and the DOC did not provide further testing to verify his positive or negative status and potentially return him to the general population sooner. Mr. Ashford seeks 30 to 50 thousand dollars in compensatory damages for having had to suffer 10 days of solitary confinement. The State has filed a motion to dismiss.

*What are the claims and who are the defendants?*

In the complaint, Mr. Ashford is clearly attempting to raise two federal constitutional claims, violations of the 8th Amendment (cruel and unusual punishment) and Due Process (substantive and possibly procedural). Both claims are enabled by 42 U.S.C. § 1983. The State characterizes Mr. Ashford's claims more vaguely as “tort” and “civil tort” without elaboration, though in part of its briefing it does argue that the circumstances cannot amount to a violation of the 8th Amendment. If Mr. Ashford is attempting to bring any claims other than the two § 1983 claims identified here, the complaint is far too unclear for the court to discern them and for the State to have to respond to them.

In the caption to the complaint, Mr. Ashford describes the defendant(s) as the “State of Vt. et al. (VDOC)” and describes that expression in the singular as “Defendant.” He thus appears to intend the State to be a defendant and the “et al.” to refer to the DOC, another name for the State. Nothing in the body of the complaint indicates that he intends anyone else to be an individual capacity defendant. There is no proof of service on anyone in the record, nor any proof of any waiver of service by anyone, eliminating any such documentation as evidence of Mr. Ashford's intentions. Attorney Connors filed a notice of

appearance on behalf of the State of Vermont only, and only the State filed an answer to the complaint. The court concludes in these circumstances that the only defendant in this case is the State of Vermont.

Mr. Ashford thus has asserted two § 1983 claims for retrospective relief, compensatory damages, against the State.

*Propriety of the State as a defendant to a § 1983 claim for damages*

The State is not a “person” subject to claims for compensatory damages under § 1983. See *Will v. Michigan*, 491 U.S. 58, 71 (1989); *Heleba v. Allbee*, 160 Vt. 283, 286 (1992).

Because this case consists of two § 1983 claims against the State for damages, but the State cannot be subject to damages claims under § 1983, the State is entitled to dismissal on that basis. There is no need to address any of the other issues raised by the State.

*Status of discovery*

The court understands that Mr. Ashford has sought discovery from the State, and he asserts in opposition to dismissal that the State has yet to produce it. There is no showing, however, that the discovery could have any bearing on the propriety of dismissing Mr. Ashford’s § 1983 claims against the State as set forth above. Dismissal is warranted based on the allegations of the complaint, even if Mr. Ashford is able to prove them.

Order

For the foregoing reasons, the State’s motion to dismiss is granted. The State shall submit a form of judgment. V.R.C.P. 58(d).

SO ORDERED this 10<sup>th</sup> day of May, 2022.



Robert A. Mello  
Superior Judge