

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division

JOHN LOUIS FREEMAN, SR.,)

Plaintiff,)

v.)

Civil No. _____

VIRGINIA DEPARTMENT OF)

CORRECTIONS; HAROLD W. CLARKE,)

Director of the Virginia Department of)

Corrections in his individual and official)

capacities; KENNETH W. STOLLE, Sheriff)

of the City of Virginia Beach in his individual)

and official capacities; JOHN DOE(S) 1-10,)

employees of the Virginia Department of)

Corrections or the Virginia Beach Corrections)

Center in their individual and official)

capacities,)

Defendants.)

COMPLAINT

INTRODUCTION

1. Plaintiff John Louis Freeman, Sr., seeks redress against Defendants for imprisoning him, in direct defiance of court orders, for 77 days longer than they were authorized to do by law. Freeman brings this action under the Eighth and Fourteenth Amendments of the United States Constitution, 42 U.S.C. § 1983, and the laws of the Commonwealth of Virginia.

JURISDICTION AND VENUE

2. This Court has jurisdiction over Plaintiff's federal claims pursuant to Article III of the United States Constitution and 28 U.S.C. §§ 1331 (federal question) & 1343 (civil rights violation).

3. This Court has supplemental jurisdiction over Plaintiff's claims based on Virginia law, as they are related to claims within the Court's original jurisdiction in that they form part of the same case or controversy under Article III of the United States Constitution.

4. Venue is proper in this Court under 28 U.S.C. §§ 1391(b)(1)-(2), because a substantial part of the events giving rise to the claim occurred in this District.

5. Freeman gave notice to the Commonwealth of Virginia pursuant to Virginia Code § 8.01-195.6 on April 11, 2016.

PARTIES

6. Freeman is a citizen of the Commonwealth of Virginia and a former prisoner of the Virginia Department of Corrections (VDOC). His VDOC identification number was 1329654. Virginia Beach Correctional Center (Correctional Center) is the jail in which Freeman was physically incarcerated during the times relevant to this Complaint. The Correctional Center is located at 2501 James Madison Blvd, Virginia Beach, VA 23456. Freeman was incarcerated in the Correctional Center at the behest of and under the authority of VDOC.

7. Defendant VDOC is the state agency to which custody of Freeman was assigned during the times relevant to this Complaint. VDOC is located at 6900 Atmore Drive, Richmond, Virginia, 23225.

8. Defendant Harold W. Clarke is the Director of VDOC, 6900 Atmore Drive, Richmond, Virginia, 23225. In that capacity, he is in charge of the VDOC, has custody and control of all persons confined under its authority, and is responsible for its day-to-day operations. All of the actions of VDOC or John Doe(s) 1-10 that are employed by VDOC alleged in this Complaint were taken at the direction or under the authority of Director Clarke.

9. Defendant Kenneth W. Stolle is the Sheriff of the City of Virginia Beach. In that capacity, he is in charge of the Correctional Center, has custody and control of all persons confined there, and is responsible for the day-to-day operations of the facility. His office is located at 2501 James Madison Blvd, Virginia Beach, VA 23456. All of the actions of the Correctional Center or John Doe(s) 1-10 that are employed by the Correction Center alleged in this Complaint were taken at the direction or under the authority of Sheriff Stolle.

10. Defendants John Doe(s) 1-10 is or are one or more employees of either VDOC or the Correctional Center who defied orders of the Virginia Beach Circuit Court and the Norfolk Circuit Court by refusing to credit Freeman with time that Freeman spent in custody in Massachusetts pursuant to a detainer issued by the Commonwealth and by refusing to release Freeman when he had completed serving his sentences.

11. At all times, Defendants were responsible for employing, carrying out, and monitoring the execution of practices and procedures sufficient to ensure the constitutional rights of Freeman and for obeying the lawful orders of the courts relating to the incarceration of persons in the custody of Defendants.

FACTUAL ALLEGATIONS

12. On March 8, 2005, Freeman was convicted of forgery of a public record in the Virginia Beach Circuit Court and was placed on supervised probation.

13. On June 21, 2010, while on probation for the forgery charge, Freeman was found guilty of felony drug possession (hereinafter "Drug Charge") in the Norfolk Circuit Court.

14. On August 1, 2010, Freeman was stopped and charged with minor traffic offenses in Norfolk. When he did not appear for trial of those offenses, he was charged with failure to appear (hereinafter "FTA Charge").

15. On January 6, 2011, the Virginia Beach Circuit Court issued a *capias* for Freeman's arrest for violating the terms of his probation (hereinafter "Probation Violation").

16. On October 6, 2011, Freeman was stopped for minor traffic offenses by Trooper McLaughlin of the South Boston (Massachusetts) State Police. During the stop, Trooper McLaughlin discovered an outstanding Virginia warrant or warrants for Freeman's arrest and placed Freeman in custody at a Massachusetts jail.

17. That same day, at 11:21 p.m., Trooper McLaughlin sent a message to Virginia law enforcement officials, confirming that the Massachusetts State Police had placed Freeman in custody and asking for an immediate response.

18. Five minutes later, at 11:26 p.m., P. Ridley of the Virginia Beach Police Department replied to Trooper McLaughlin. The message from P. Ridley said, "We will extradite from Boston. Please use teletype and NCIC entry as detainer to hold on no bond."

19. On October 7, 2011, Freeman was arraigned in a Massachusetts court.

20. On November 7, 2011, Freeman signed a waiver of his right to extradition proceedings in Massachusetts.

21. Freeman was held in Massachusetts on the Virginia detainer from October 7, 2011, until March 4, 2013, a period of 515 days. On March 4, 2013, Freeman was released on bond.

22. While still in Massachusetts, Freeman was rearrested on the Virginia warrant or warrants and held in jail from February 10, 2014, to February 24, 2014, a period of 14 days.

23. Freeman was never sentenced to a custodial sentence on the Massachusetts charges. In total, therefore, Freeman spent 529 days in custody in Massachusetts while held on the Virginia detainer and/or warrant(s).

24. On April 17, 2014, while driving through Virginia's Eastern Shore, Freeman was stopped for traffic violations. He was taken into custody in Northampton County for driving on a suspended license (hereinafter "DOS Charge"), as well as a warrant for the Drug Charge in Norfolk and a capias for the Probation Violation in Virginia Beach.

25. On June 19, 2014, Freeman was convicted of the FTA Charge in the Norfolk General District Court (Traffic), case number GT10038443-00, with an offense date of August 19, 2010, and sentenced to 30 days of active misdemeanor time.

26. On July 18, 2014, Freeman was sentenced on the Drug Charge in the Norfolk Circuit Court, case number CR10000165-00, and sentenced to seven years in prison, with five years suspended – two years (730 days) of active felony time.

27. On July 31, 2014, Freeman was found guilty of the Probation Violation on the 2005 forgery conviction in the Virginia Beach Circuit Court, case number CR04001178-03, and sentenced to five years and three months, with four years and three months suspended – one year (365 days) of active felony time.

28. On November 13, 2014, Freeman was convicted of the DOS Charge in the Northampton General District Court, case number GT14005639-00, and sentenced to 75 days with 60 days suspended – 15 days of active misdemeanor time, ten of those days a mandatory minimum sentence.

29. Freeman was sentenced to a total of 1,140 days on the FTA Charge, the Drug Charge, the Probation Violation, and the DOS Charge. With allowances for good conduct and earned sentence credits, VDOC calculated that Freeman had to serve 957 days in prison to satisfy his various sentences.

30. VDOC informed Freeman that his release date would be November 28, 2016. The November 28, 2016 release date was 957 days after his April 17, 2014 arrest in Northampton County and did not give Freeman any credit for the time he was held in custody in Massachusetts.

31. On March 24, 2015, in response to a motion filed by Freeman, the Virginia Beach Circuit Court issued an order mandating that Freeman be given credit “for time served from 10/07/2011-03/04/2013.”

32. Defendants had a duty to abide by the order of which they had actual or constructive knowledge. Nothing in the order authorized any Defendant to deviate from the express requirement of the order that Freeman be given credit for all time he was held in custody in Massachusetts from October 7, 2011, through March 4, 2013. In light of the express terms of the order, Defendants could not reasonably have believed that they had the authority or discretion to deviate from the order or that deviating from the express terms of the order was not a violation of Freeman’s rights.

33. Although they had no discretion to refuse to obey the Circuit Court’s order, and by doing so acted with deliberate indifference to or in intentional violation of Freeman’s rights, Defendants did not abide by this order. Acting unilaterally and contrary to the explicit terms of the Virginia Beach Circuit Court’s order, Defendants gave Freeman only partial credit for his Massachusetts time served and informed him that they were reserving the remaining credit to apply to future revocations.

34. Defendants provided Freeman a revised release date of January 12, 2016, some ten and one-half months earlier than his previous release date, November 28, 2016. On April 28, 2015, VDOC informed Freeman that he was entitled to additional credit for 36 days he had been

held in custody. The 36 days included credit for 22 days Freeman had served in a Norfolk jail in 2009 and 2010 and credit for the 14 days Freeman had served in Massachusetts in February 2014. To reflect these credits, VDOC revised Freeman's release date to December 10, 2015.

35. The April 28, 2015 update still did not give Freeman credit for all the time he served in Massachusetts. On July 13, 2015, in response to a motion filed by Freeman in order to receive credit for all the time he had served in Massachusetts, the Norfolk Circuit Court issued an order requiring that Freeman "shall receive credit for time served while in custody in Massachesutts *{sic}*, pending his extradition to Virignia *{sic}*."

36. Defendants had a duty to abide by the order of which they had actual or constructive knowledge. Nothing in the order authorized any Defendant to deviate from the express requirement of the order that Freeman be given credit for all time he was held in custody in Massachusetts pending extradition to Virginia. In light of the express terms of the order, Defendants could not reasonably have believed that they had the authority or discretion to deviate from the order or that deviating from the express terms of the order was not a violation of Freeman's rights.

37. As of July 13, 2015, Freeman had served 982 days. Based on the order of the Norfolk Circuit Court, Freeman should have been released immediately on issuance of that order. But VDOC and the Correctional Center did not abide by that order either. Although they had no discretion to refuse to obey the Circuit Court's order, and by doing so acted with deliberate indifference to or in intentional violation of Freeman's rights, Defendants did not abide by this order. Acting unilaterally and contrary to the explicit terms of the Virginia Beach Circuit Court's order, Defendants held Freeman in custody without giving him credit as required

by the order until, without explanation, Defendants ordered Freeman's release on August 12, 2015.

38. Freeman was continuously held in custody in Virginia from April 17, 2014, until his release on August 12, 2015, a period of 483 days. Combined with the 529 days he served in in Massachusetts jail and the 22 days he served in the Norfolk Jail in 2009 and 2010, Freeman was held in custody for 1,034 days on the FTA Charge, the Drug Charge, the Probation Violation, and the DOS Charge. That is 77 more days than the 957 days that VDOC calculated Freeman had to serve to satisfy his sentences.

39. Although Freeman was housed at several Virginia facilities, he spent the majority of that time as a state-responsible inmate held at the Correctional Center.

40. Because of Defendants' unlawful actions, Plaintiffs has suffered loss of liberty, loss of enjoyment of life, humiliation, mental suffering, emotional distress, stress, and other non-economic losses in an amount to be determined at trial.

CLAIMS FOR RELIEF

COUNT I

Eighth Amendment to the United States Constitution— Cruel and Unusual Punishment; 42 U.S.C. §1983

41. Freeman incorporates and re-alleges Paragraphs 1–40 of this Complaint.

42. Defendants intentionally imprisoned Freeman longer than the sentences lawfully imposed.

43. Defendants acted under color of state law.

44. Defendants punished Freeman by confining him in jail without authorization of law or penological justification.

45. The Eighth Amendment to the United States Constitution prohibits cruel and unusual punishment, and is incorporated against Virginia under the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

46. Defendants deprived Freeman of his right against cruel and unusual punishment under the Eighth and Fourteenth Amendments to the United States Constitution, with deliberate indifference, because they knew that Freeman's sentence was over but failed to correct the problem by releasing him.

47. As a result of Defendants' actions, Freeman suffered wrongful imprisonment for 77 days.

48. Defendants are liable for their violation of Freeman's Eighth Amendment rights under 42 U.S.C. § 1983.

COUNT II
Fourteenth Amendment to the United States Constitution—
Deprivation of Due Process; 42 U.S.C. §1983

49. Freeman incorporates and re-alleges Paragraphs 1–48 of this Complaint

50. Defendants intentionally imprisoned Freeman longer than the sentences lawfully imposed.

51. Defendants acted under color of state law.

52. The Fourteenth Amendment to the United States Constitution prohibits the deprivation of liberty without due process of law.

53. Defendants intentionally deprived Freeman or caused him to be deprived of his liberty under the Fourteenth Amendment to the United States Constitution, by imprisoning him without adequate legal authorization.

54. Defendants intentionally deprived Freeman or caused him to be deprived of his right to due process under the Due Process Clause of the Fourteenth Amendment to the United States Constitution by authorizing and operating a state process that deprived Freeman of liberty without constitutionally adequate safeguards to protect against unauthorized incarceration.

55. As a result of Defendants' actions, Freeman suffered imprisonment for 77 days longer than the sentences lawfully imposed.

56. Defendants are liable for their violations of Freeman's Fourteenth Amendment rights under 42 U.S.C. § 1983.

**COUNT III
False Imprisonment**

57. Freeman incorporates and re-alleges Paragraphs 1–56 of this Complaint.

58. Defendants directly restrained the physical liberty of Freeman without adequate legal justification.

59. As a result of Defendants' actions, Freeman suffered unlawful imprisonment for 77 days.

REQUEST FOR RELIEF

For the foregoing reasons, Freeman respectfully requests that the Court grant the following relief:

- A. A declaration that Defendants violated his rights under the Eighth and Fourteenth Amendments to the United States Constitution;
- B. A declaration that Defendants committed the tort of false imprisonment against him under Virginia law;
- C. Compensatory and punitive damages in an amount to be determined at trial;
- D. Reasonable costs and attorneys' fees pursuant to 42 U.S.C. § 1988; and

E. Such other relief as the Court deems just and proper.

Dated: June 19, 2017

Respectfully Submitted,

JOHN LOUIS FREEMAN SR.

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