

STATE OF RHODE ISLAND
SUPREME COURT

CODY ALLEN ZAB

v.

SU-2019-0459-A
CA: PM2017-4195

RHODE ISLAND DEPARTMENT
OF CORRECTIONS, et al.

and

JOSE R. RIVERA

v.

SU-2019-0462-A
CA: PC2017-0433

RHODE ISLAND DEPARTMENT OF
CORRECTIONS, by and through its
Director, PATRICIA COYNE-FAGUE
In her official capacity only

ON APPEAL FROM SUPERIOR COURT

REPLY BRIEF FOR APPELLANTS/PLAINTIFFS

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ARGUMENT

1. Absent making a negligence claim against the Department of Corrections based on their action or omission, there is no way at law for Appellants to bring a conditions of confinement case in State Court if the hazardous condition involved does not amount to a constitutional violation.

While this case really is about the Appellants' ability to file a lawsuit in State Court, State Appellants continue to argue that conditions of confinement claims cannot be negligence based, as the legislature has the ability to control those claims and limit their scope, so that Appellants may bring claims based on the conditions of confinement only if they can be brought under the State and Federal Constitutions. When making this argument, State Appellants ignore the fact that the State Appellants have a duty of ordinary care to protect the Appellants as wards of the prison. Clift v. Narragansett Television, L.P., 688 A.2d 805, 810 (R.I. 1996). Absent a negligence claim, the Appellants' have no ability to enforce this duty of care to ensure their own safety.

This distinction was expressly recognized in Lombardi v. McKee, ____ F. Supp. 3d ____ (D.R.I. 2021), 2021 WL 1172715. In Lombardi, faced with Plaintiffs two negligence claims, the Court noted that:

Plaintiffs' allegations here directly relate to the conditions of their confinement – to the safety of their physical environment and adequacy of the medical care they receive while incarcerated, all of which are controlled by the State. Taking the facts alleged as true, the Civil Death Act inhibits Plaintiffs' constitutional right of access to the courts to address the alleged harms they have suffered while confined...[and] [t]he State has failed to

show how Plaintiffs could otherwise challenge the conditions of their confinement in the Civil Death Act is applied to them.

Lombardi at * 8. This statement was not limited to solely the ability of the prisoners to bring constitutional challenges as the case itself stated that the prisoners would raise claims of negligence if they were allowed to n state court. It encompassed the ability of prisoners to bring negligence claims to address all conditions of confinement and require that the State Appellants’ meet the duty of care they are owed.

2. The holdings in Gallop and Zab state clearly that prisoners with life sentences cannot bring claims in State Superior Court or Family Court

In Gallop v. Adult Correctional Institutions, 182 A.3d 1137 (R.I. 2018) this court noted that the clear language employed by the Legislature in § 13-6-1, taken in its natural sense, intends to mandate “that persons serving a life sentence are prohibited from asserting civil actions.” Id. at 1143.

In Zab v. Zab, 203 A.3d 1174 (R.I. 2019) this Court assessed a petition by Appellant Zab to have his marriage expunged. In it, this Court stated that prior to addressing Zab’s plea for relief on appeal: “we must first determine whether plaintiff, who, based upon the imposition of a sentence of life imprisonment, is deemed “civilly dead” in accordance with § 13-6-1, had the legal capacity to seek relief in the Family Court.” Id. at 1176. After this Court concluded Zab had no legal capacity to bring his suit because he is civilly dead, this Court stated: “the

Family Court had no authority to entertain any issue except whether plaintiff is in fact civilly dead.”

Seemingly State Appellants argue that even though the statute is clear on its face, and Appellants are “deemed to be dead in all respects” that the Appellants have some unenumerated civil rights reserved to them in the area of property and marriage. This ignores the language of the statute and this Court’s decisions in Zab and Gallop. The Civil Death Act states that the Appellants’ have no rights to property or marriage, or to challenge either being married or the distribution of their property. An intention of the legislature in enacting the Civil Death Act was to reserve to an innocent spouse property rights which depended on the civilly dead spouse being deemed “alive.” This language in the Civil Death Act is a relic of that time when dower and curtsy and life estates were more prevalent, and the property rights of women frequently were only through their male spouses and male relatives.

3. The State has argued numerous times that the Civil Death Act Bars all claims for relief under 42 U.S.C. § 1983 and has used the Civil Death act to deny a request for public records which were potentially needed for an inmate to bring such a claim.

In litigation with another prisoner serving life at the Rhode Island Adult Correctional Institutions, Richard Paiva, the State has repeatedly argued, before having the Supremacy Clause brought to their attention by the RI ACLU and then Paiva himself, that the Civil Death Act acts as a bar to inmates serving life sentences

from filing cases in Superior Court under 42 U.S.C. § 1983.¹ See Paiva v. Aceto, PC-2018-6281, docketed 11/5/2018 (Exh A) and Exhibits B, Paiva v. Aceto, PC-2017-1486, docketed 7/26/2017. (Exh B). The State’s contention that somehow the Superior Court has the authority, in the face of R.I.G.L. § 13-6-1 to hear those claims, when this Court’s decision in Gallop plainly states it does not, belies the Legislative authority granted by Article X § 2 which provides that “The inferior courts shall have such jurisdiction as may, from time to time, be prescribed by law.”

Going further, the state has used this act in other context to prevent a prisoner with a life sentence from receiving records under an open records request which might serve to support a 42 U.S.C. § 1983 claim. See PR 18-12, Paiva v. Rhode Island Department of Corrections (Stating a Life Prisoner cannot get public records due to the effect of R.I.G.L. § 13-6-1) (Exh C). In this decision, the Attorney General’s office made no exception for those records an inmate serving a life sentence at the ACI might need to formulate good cause under Rule 11 to proceed with a claim against the State under 42 U.S.C. § 1983.

It is simply bizarre for the State to claim that they have not sought to enforce the Civil Death Act in the face of these filings and this decision.

¹ This Court has the authority to take judicial notice of its own records. See In Re Michael A., 552 A.2d 368 (R.I. 1989)

Further, in Gallop, J. Taft-Carter was the person who raised the issue of jurisdiction. Even if the State does not raise the issue, the Justices of the Superior Court can, and have, sua sponte raised issues of their own jurisdiction on claims. This argument is unpersuasive.

4. The Appellee Global Tel*Link Corporation did not file a brief in opposition to the Appellants Appeal

Whether there are any unique issues which would be raised by Global Tel*Link Corporation is unknown in that they did not file a brief. Appellants would only note that, like the State Appellees, they were providing services to RIDOC at the ACI and owed Appellant Zab a duty of care to perform those services without subjecting him to harm.

CONCLUSION

WHEREFORE, Appellants request that Rhode Island General Law § 13-6-1 be declared unconstitutional for the reasons set forth herein and that the matters be remanded to Superior Court for further proceedings therein.

Appellants,
Cody Allen-Zab and Jose Rivera
By their attorney

/s/ Sonja L. Deyoe
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CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 18(B). 1.

This Appellant brief contains 1,164 words, excluding the parts exempted from the word count by Rule 18(b). 2. This brief complies with the font, spacing, and type size requirements stated in Rule 18(b).

/s/ Sonja L Deyoe
Signature of Filing Attorney

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I electronically filed this document with the Rhode Island Supreme Court and electronically served a true copy of this document, on this 9th day of June 2021, to those indicated below:

William L. Lynch, Esq
WJ Lynch Law
320 Newport Avenue
Rumford, RI 02916

Katherine Connolly Sadeck
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Providence, RI 02903

/s/ Sonja L. Deyoe

ADDENDUM

- A. Paiva v. Aceto, PC-2018-6281, docketed 11/5/2018. ADD2
- B. Paiva v. Aceto, PC-2017-1486, docketed 7/26/2017. ADD9
- C. PR 18-12, Paiva v. Rhode Island Department of CorrectionsADD15

Exh A

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PROVIDENCE, SC SUPERIOR COURT**

**RICHARD PAIVA,
Plaintiff**

vs.

**JEFFREY ACETO,
WALTER DUFFY &
SHAWN LARGY,
Defendants.**

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C.A. No. PD-2018-6261

**DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION TO
DISMISS PLAINTIFF'S THIRD AMENDED COMPLAINT**

NOW COME Defendants, Warden Jeffrey Aceto, Captain Walter Duffy, and Correctional Officer Shawn Largy of the Rhode Island Department of Corrections (Defendants) and hereby submit this memorandum of law in support of their motion to dismiss Plaintiff's third amended complaint for failure to state a claim upon which relief may be granted pursuant to Rules 12(b)(1) and 12(b)(6) of the Rhode Island Superior Court Rules of Civil Procedure.

FACTS AND TRAVEL

Plaintiff has been incarcerated at the Rhode Island Department of Corrections since March of 2009 and is currently serving a life sentence for Murder and a consecutive ten (10) year sentence for being a habitual offender. State v. Paiva, P1-2009-1596A. On or about February 12, 2018, Plaintiff Richard Paiva filed a complaint in the Rhode Island District Court alleging that some of his personal property was taken from him and he was seeking to get the items back or the cost of the items in damages. See Complaint. Plaintiff filed a motion to amend his complaint which was granted by the District Court on May 14, 2018. In Plaintiff's amended complaint he sought damages related to the property he alleged was taken from him. See Amended Complaint. Plaintiff

also sought to have an institutional disciplinary booking removed from his record along with declaratory relief and injunctive relief. The Plaintiff proceeded to trial in the District Court and on July 16, 2018, after a full evidentiary trial, Plaintiff's amended complaint was dismissed, and judgment was entered in favor of Defendants relative to all claims. See District Court Order and Judgment. Plaintiff filed a notice of appeal on August 2, 2018, and this case was appealed to this Honorable Court on August 29, 2018.

Plaintiff's motion to file a third amended complaint was granted. The third amended complaint is almost identical to the previous complaints except that Plaintiff is only seeking compensatory damages (\$58.65), punitive damages, the costs of suit and had dropped the equitable claim.

As shown below, pursuant to Rhode Island Statute, Plaintiff is civilly dead, and this Court does not have the authority to hear the merits of this case. See R.I. Gen. Laws §13-6-1; Gallop v. Adult Corr. Insts., 2018 R.I. LEXIS 44, at *13-14 (May 8, 2018) attached hereto as Exhibit A. Accordingly, Defendants respectfully request that this Court grant their motion to dismiss because Plaintiff has failed to state a claim upon which relief may be granted.

STANDARD OF REVIEW

The function of a motion to dismiss is to test the sufficiency of the complaint. Palazzo v. Alves, 944 A.2d 144, 149 (R.I. 2008). The Court looks to the four corners of the complaint and assumes that allegations are true and view them in the light most favorable to the non-moving party. Barrette v. Yakavonis, 966 A.2d 1231, 1234 (R.I. 2009). A motion to dismiss is properly granted when it is clear that the plaintiff is not entitled to relief "from the defendant under any set of facts that could be proven to support plaintiff's claim." Audette v. Poulin, 2015 WL 8350473, at *2 (R.I. 2015) (citation omitted). "However, '[a]llegations that are more in the nature of legal

conclusions rather than factual assertions are not necessarily assumed to be true.” Dilibero v. Mortg. Elec. Registration Sys., 108 A.3d 1013, 1016 (R.I. 2015) (citation omitted).

ARGUMENT

A. This Court Lacks Jurisdiction Over Plaintiff’s Claims Because He Is Civilly Dead Pursuant To Rhode Island Law

On September 23, 2010, Plaintiff Richard Paiva pled *nolo contendere* to one count of murder and one count of being a habitual criminal and was sentenced to life with a consecutive sentence of ten (10) years. See State v. Paiva, P1-2009-1596A. In Rhode Island, a plea of *nolo contendere* is the same as pleading guilty. State v. Feng, 421 A.2d 1258, 1266 (R.I. 1980). The judgment of conviction was entered on September 26, 2010 and it has become final as there has been no appeal of the conviction. See State v. Paiva, P1-2009-1596A. As a result of his plea, his life sentence, and the final entry of judgment of conviction, Plaintiff is now civilly dead pursuant to Rhode Island General Laws §13-6-1.

The “civil death” statute states that every individual convicted of a crime and sentenced to life is, “with respect to all rights of property, to the bond of matrimony and to all civil rights and relations of any nature whatsoever, be deemed to be dead in all respects, as if his or her natural death had taken place at the time of conviction.” Id. Recently, the Rhode Island Supreme Court has reaffirmed the civil death statute and indicated that “the Legislature has unambiguously mandated that persons serving a life sentence are prohibited from asserting civil actions.” Gallop, 2018 R.I. LEXIS 44, at *13. The Rhode Island Supreme Court indicated that in the Rhode Island Superior Court it would be an error to proceed “and an excess of jurisdiction for the Superior Court to consider plaintiff’s claims when the Legislature has declared plaintiff to be civilly dead.” Id.

Here, Plaintiff’s judgment of conviction is final and he became civilly dead on September 26, 2010. Therefore, Plaintiff has no civil rights and it is considered that his natural death occurred

on September 26, 2010. The Rhode Island Supreme Court has affirmed that pursuant to the civil death statute, “persons serving a life sentence are prohibited from asserting civil actions.” Gallop, 2018 R.I. LEXIS 44 at *13. Accordingly, it would be an excess of this Court’s jurisdiction and an error to proceed on Plaintiff’s claims for money damages and Defendants respectfully request that Plaintiff’s Complaint be dismissed due to Plaintiff’s failure to state a claim upon which relief may be granted. Id. at 14.

Moreover, Plaintiff’s seeks compensatory damages in the amount of \$58.65. R.I.G.L. §8-2-14 states in pertinent part that “The Superior Court shall have exclusive original jurisdiction of all other actions at law in which the amount in controversy shall exceed the sum of ten thousand (\$10,000);and also shall have concurrent original jurisdiction with the District Court in all other actions at law in which the amount in controversy exceeds the sum of five thousand dollars (\$5,000) and does not exceed ten thousand dollars (\$10,000);” *See Exhibit A.* Accordingly, this Court lacks jurisdiction based on the fact that the amount in controversy, as asserted in the third amended complaint, is \$58.65 and thus fails to meet the “amount in controversy” threshold of the statute.

CONCLUSION

WHEREFORE, for the foregoing reasons, Defendants, Warden Jeffrey Aceto, Captain Walter Duffy, and Correctional Officer Shawn Largy of the Rhode Island Department of Corrections respectfully request that Plaintiff’s Complaint be dismissed due to Plaintiff’s failure to state a claim upon which relief may be granted.

DEFENDANTS
WARDEN JEFFREY ACETO,
CAPTAIN WALTER DUFFY, AND
CORRECTIONAL OFFICER SHAWN LARGY

By their Attorneys,

/s/ Michael B. Grant

/s/ Ian P. Anderson

Michael B. Grant, Esquire (#3864)

Ian P. Anderson, Esquire (# 8568)

R.I Department of Corrections

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CERTIFICATION

I hereby certify that on the 5th day of November 2018 I filed this document through the Rhode Island Superior Court electronic filing system. The document electronically filed is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/ Ian P. Anderson

I, the undersigned, certify that a copy of the foregoing document was hand delivered on this 5th day of November, 2018, to the following:

Richard Paiva, #86429
High Security
P.O. Box 8200
Cranston, RI 02920

/s/ Ian P. Anderson

Exh B

**STATE OF RHODE ISLAND
PROVIDENCE, SC**

SUPERIOR COURT

**RICHARD PAIVA,
Plaintiff,**

v.

**JEFFERY ACETO, BRENDAN
HANDFIELD, MATTHEW KETTLE,
CORY CLOUD, RONALD MELEO,
ASHBEL WALL, CHRIS TRAVERS
Defendants.**

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CA. No. PC17-1486

**DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION TO
DISMISS PLAINTIFF'S COMPLAINT**

Now come Defendants, Director Ashbel T. Wall, Warden Matthew Kettle, Deputy Warden Jeffery Aceto, Lieutenant Chris Travers, Correctional Officer Ronald Meleo, Brendan Handfield, and Cory Cloud of the Rhode Island Department of Corrections (Defendants) and hereby submit this memorandum of law in support of their motion to dismiss for lack of subject-matter jurisdiction and Plaintiff's Complaint for failure to state a claim upon which relief may be granted pursuant to Rules 12(b)(1) and 12(b)(6) of the Rhode Island Superior Court Rules of Civil Procedure.

FACTS AND TRAVEL

On June 15, 2017, Plaintiff Richard Paiva filed an Amended Complaint against Jeffery Aceto, Brendan Handfield, Matthew Kettle, Cory Cloud, Ronald Meleo, Ashbel Wall, and Chris Travers alleging various issues related to the conditions of his confinement at the Maximum Security Facility of the Rhode Island Department of Corrections. *Amended Complaint* attached hereto as Exhibit 1. Plaintiff has been incarcerated at the Rhode Island Department of Corrections since March of 2009 and is currently serving a life sentence for Murder and a consecutive ten (10)

year sentence for being a habitual offender. State v. Paiva, P1091596A. Plaintiff alleges that the conditions of his confinement amount to a violation of his First, Eighth, and Fourteenth Amendment rights as well as the corresponding sections of the Rhode Island Constitution. Exhibit 1. However, pursuant to Rhode Island law, Plaintiff is civilly dead and has no civil rights because it is “as if his or her natural death had taken place at the time of conviction.” R.I. Gen. Laws §13-6-1. Accordingly, Defendants respectfully request that this Court grant their motion to dismiss because this Court does not have jurisdiction over Plaintiff’s claims and he has failed to state a claim upon which relief may be granted.

STANDARD OF REVIEW

The function of a motion to dismiss is to test the sufficiency of the complaint. Palazzo v. Alves, 944 A.2d 144, 149 (R.I. 2008). The Court looks to the four corners of the complaint and assumes that allegations are true and view them in the light most favorable to the non-moving party. Barrette v. Yakavonis, 966 A.2d 1231, 1234 (R.I. 2009). A motion to dismiss is properly granted when it is clear that the plaintiff is not entitled to relief “from the defendant under any set of facts that could be proven to support plaintiff’s claim.” Audette v. Poulin, 2015 WL 8350473, at *2 (R.I. 2015) (citation omitted). “However, ‘[a]llegations that are more in the nature of legal conclusions rather than factual assertions are not necessarily assumed to be true.’” Dilibero v. Mortg. Elec. Registration Sys., 108 A.3d 1013, 1016 (R.I. 2015) (citation omitted).

Moreover, the Rhode Island Supreme Court has steadfastly held that “a claim of lack of subject matter jurisdiction may be raised at any time.” Long v. Dell, Inc., 984 A.2d 1074, 1078 (R.I. 2009) (*quoting* Pollard v. Acer Group, 870 A.2d 429, 433 (R.I. 2005)). Because subject-matter jurisdiction is an indispensable ingredient of any judicial proceeding, it can also be raised by the court *sua sponte*. Paolino v. Paolino, 420 A.2d 830, 833 (R.I. 1980).

ARGUMENT

On September 23, 2010, Plaintiff Richard Paiva pled *nolo contendere* to one count of murder and one count of being a habitual criminal and was sentenced to life with a consecutive sentence of ten (10) years. See State v. Paiva, P1091596A. In Rhode Island, a plea of *nolo contendere* is the same as pleading guilty. State v. Feng, 421 A.2d 1258, 1266 (R.I. 1980). The judgment of conviction was entered on September 26, 2010 and it has become final as there has been no appeal. See State v. Paiva, P1091596A. As a result of his plea, his life sentence, and the final entry of judgment of conviction, Plaintiff is now civilly dead pursuant to Rhode Island General Laws §13-6-1.

In Rhode Island, every individual convicted of a crime and sentenced to life is, “with respect to all rights of property, to the bond of matrimony and to all civil rights and relations of any nature whatsoever, be deemed to be dead in all respects, as if his or her natural death had taken place at the time of conviction.” Id. The Rhode Island Supreme Court has stated that a person’s civil death is triggered when there is a final judgment of conviction entered. Bogosian v. Vaccaro, 422 A.2d 1253, 1254 (R.I. 1980).

Here, Plaintiff’s judgment of conviction is final and he became civilly dead on September 26, 2010. Therefore, Plaintiff has no civil rights and it is considered that his natural death occurred on September 26, 2010. Accordingly, this Court has no jurisdiction over claims made by someone who is civilly dead. In addition, Plaintiff lacks standing in this matter as there is no case in controversy due to the plain language of the statute which states that Plaintiff has no civil rights, the very basis of Plaintiff’s claims in his Amended Complaint. See R.I. Gen. Laws §13-6-1; Exhibit 1. Moreover, Plaintiff has failed to state a claim upon which relief may be granted because the plain language of the statute states that Plaintiff has no civil rights, the basis of his claims contained

in Plaintiff's Amended Complaint. Id. Accordingly, Defendants respectfully request that Plaintiff's Complaint be dismissed due to this Court's lack of subject-matter jurisdiction, Plaintiff's lack of standing, and his failure to state a claim upon which relief may be granted.

CONCLUSION

WHEREFORE, for the foregoing reasons, Defendants Director Ashbel T. Wall, Warden Matthew Kettle, Deputy Warden Jeffery Aceto, Lieutenant Chris Travers, Correctional Officer Ronald Meleo, Brendan Handfield, and Cory Cloud respectfully request that Plaintiff's Complaint be dismissed due to this Court lack of subject-matter jurisdiction, Plaintiff's lack of standing, and his failure to state a claim upon which relief may be granted.

DEFENDANTS
ASHBEL WALL, MATTHEW KETTLE,
JEFFERY ACETO, CHRIS TRAVERS,
RONALD MELEO, BRENDAN
HANDFIELD, and CORY CLOUD

By their Attorney,

/s/ Ian P. Anderson
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FAX: (401) 462-2583
Ian.anderson@doc.ri.gov

CERTIFICATION

I hereby certify that on the 26th day of July, 2017 I filed this document through the Rhode Island Superior Court electronic filing system. The document electronically filed is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/ Ian P. Anderson

I, the undersigned, certify that a copy of the foregoing document was mailed via Rhode Island Department of Corrections Interdepartmental Mail, on this 26th day of July, 201, to the following:

Richard Paiva, #86429
Maximum Security
P.O. Box 8273
Cranston, RI 02920

/s/ Ian P. Anderson

Exh C



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

150 South Main Street • Providence, RI 02903
(401) 274-4400 - TDD (401) 453-0410

Peter F. Kilmartin, Attorney General

June 5, 2018
PR 18-12

Mr. Richard Paiva #86429
ACI- High Security Center
P.O. Box 8200
Cranston, Rhode Island 02920

Re: **Paiva v. Rhode Island Department of Corrections**

Dear Mr. Paiva:

The investigation into your Access to Public Records Act ("APRA") complaint dated December 6, 2017, filed against the Rhode Island Department of Corrections ("RIDOC"), is complete.

Your complaint alleges, in pertinent part:

"I recently filed an APRA request with the RIDOC in which what I believe is public information of a state employee was redacted from my request.

I did write back to the RIDOC and appealed to them to provide me with an unredacted version of my request, but that was also denied."

The information that you contend the RIDOC improperly redacted concerns the name of the elementary or secondary school last attended, the type of high school course completed, and the lowest and highest weekly salary (and the dates) for prior employment. You requested this information from the job applications for two specific correctional officers employed at the RIDOC.

The RIDOC submitted a substantive response through attorney Kathleen M. Kelly, Esquire. Attorney Kelly's response states, in relevant part:

"After receiving this request I contacted the Human Resources Unit for copies of this information. Upon receipt, I reviewed the documents in question to determine if the information requested was public in nature. After review, I redacted the officers' home addresses, telephone numbers¹, the names of the high schools each

¹ You do not contest the redaction of the officers' home addresses or telephone numbers.

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Page 2

officer attended, and in the case of Captain Duffy I redacted the salary he earned prior to his employment with the DOC.

* * *

I declined to provide the above referenced information pursuant to RIGL §38-2-2(A)(I)(b) – []personnel and other personal individually identifiable records the disclosure of which would constitute a clearly unwarranted invasion of personal privacy is not subject to public disclosure. In applying the applicable balancing test between the public interest in disclosure of the information weighed against the privacy interests of Officers Duffy and Largy, I determined that the officers' privacy rights outweighed Mr. Paiva's rights to this information."

You filed a rebuttal.

At the outset, we note that in examining whether a violation of the APRA has occurred, we are mindful that our mandate is not to substitute this Department's independent judgment concerning whether an infraction has occurred, but instead, to interpret and enforce the APRA as the General Assembly has written this law and as the Rhode Island Supreme Court has interpreted its provisions. Furthermore, our statutory mandate is limited to determining whether the RIDOC violated the APRA. See R.I. Gen. Laws § 38-2-8. In other words, we do not write on a blank slate.

You are an inmate at the RIDOC and it is our understanding that you have been sentenced to life in prison. See http://www.doc.ri.gov/inmate_search/search_details.php?inmateid=86429. Your life sentence implicates R.I. Gen. Laws § 13-6-1, which states:

"Every person imprisoned in the adult correctional institutions for life shall, with respect to all rights of property, to the bond of matrimony and to all civil rights and relations of any nature whatsoever, be deemed to be dead in all respects, as if his or her natural death had taken place at the time of conviction. However, the bond of matrimony shall not be dissolved, nor shall the rights to property or other rights of the husband or wife of the imprisoned person be terminated or impaired, except on the entry of a lawfully obtained decree for divorce."

Recently, the Rhode Island Supreme Court examined this statute in Gallop v. Adult Correctional Institutions, slip. op. (R.I., May 8, 2018). In Gallop, the Superior Court dismissed a lawsuit that alleged state law claims on the basis that Inmate Gallop had been sentenced to life in prison, and therefore, by operation of law was deemed civilly dead. The Supreme Court affirmed, concluding that "a person such as the plaintiff, who is serving a life sentence, is deemed civilly dead and thus does not possess most commonly recognized civil rights." Id. at 6.

Here, because you have been sentenced to life in prison, the so-called civil death statute applies and you do "not possess most commonly recognized civil rights." Id. Since Gallop establishes that an inmate sentenced to life in prison may not bring a lawsuit in state court concerning state law claims, we have no trouble determining that in accordance with Gallop your right to file an

ADD016

Paiva v. Rhode Island Department of Corrections

PR 18-12

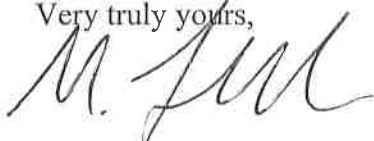
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APRA complaint alleging the deprivation of the APRA has been extinguished. Indeed, if this Office were to find your complaint meritorious, the remedy would be to file a lawsuit in Superior Court on your behalf – a remedy that Gallop makes clear is terminated. See R.I. Gen. Laws § 38-2-9.

Despite the foregoing, even if we were to reach the merits of your complaint, we would still find no violation. Specifically, R.I. Gen. Laws § 38-2-2(A)(I)(b) exempts “[p]ersonnel and other personal individually-identifiable records otherwise deemed confidential by federal or state law or regulation, or the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]” Here, you contend that certain correctional officers’ educational and past employment history is necessary and serves the public interest because you – and presumably the public – have a right to know the qualifications of state employees in general and correctional officers in particular. Even if we accept this broad assertion, the evidence reveals that the applications provided to you contained the level of educational history and the name (and nature) of past employment. The only information redacted upon which your complaint is based concerns the redaction of the name of the “elementary or secondary school last attended,” the type of high school course, the lowest and highest weekly salary of a prior employment, and the start and finish date of a prior employment. We fail to discern how the disclosure of this information will advance the public interest you assert and further conclude that in the context of this case, the disclosure of this information would “constitute a clearly unwarranted invasion of personal privacy.” R.I. Gen. Laws § 38-2-2(4)(A)(I)(b). Based upon R.I. Gen. Laws § 13-6-1, and because the information you have requested is exempt from public disclosure, we find no violation.

Please be advised we are closing this file as of the date of this letter.

Very truly yours,



Michael W. Field
Assistant Attorney General

MF/kr

Cc: Kathleen M. Kelly, Esq.

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