

ENTERED

June 20, 2018

David J. Bradley, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DAVID LAND,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. H-15-2607
	§	
SHERIFF RAND HENDERSON, et al.,	§	
	§	
Defendants. ¹	§	

MEMORANDUM OPINION AND ORDER

The plaintiff, David Land, has filed a Prisoner's Civil Rights Complaint under 42 U.S.C. § 1983 ("Complaint") (Docket Entry No. 1) concerning the conditions of his confinement at the Montgomery County Jail, which is operated by the Montgomery County Sheriff's Office ("MCSO"). Pending before the court is Defendants' Motion for Summary Judgment filed by Montgomery County Sheriff Rand Henderson and Lieutenant Myrick ("Defendants' MSJ") (Docket Entry No. 45). Land has filed a Motion of Response to Defendants' Answers ("Plaintiff's Response") (Docket Entry No. 51) and a Motion Seeking That All Proceedings Be Sealed ("Plaintiff's Motion to Seal") (Docket Entry No. 54). After considering the pleadings, the exhibits, and the applicable law, the court will grant the

¹The Complaint listed former Montgomery County Sheriff Tommy Gage, who has since retired, as the lead defendant. The court has substituted current Montgomery County Sheriff Rand Henderson, who succeeded Gage, as the proper party pursuant to Rule 25(d) of the Federal Rules of Civil Procedure.

Defendants' MSJ and will dismiss this case for the reasons explained below.

I. Background

In December of 2013 Land was in custody at the Montgomery County Jail, pending criminal charges.² He was housed in administrative segregation because the nature of the charges against him (child pornography) and his status as a former sheriff's deputy, who previously worked as a detention officer at the Harris County Jail, put him at risk of violence by other inmates.³

While he was confined at the Montgomery County Jail in March of 2013, Land told his defense attorney that he had information about a fellow inmate housed near him in administrative segregation, Robert L. Wilson, who had made inculpatory admissions about murder charges that were pending against him.⁴ On December 13, 2013, Land entered a guilty plea to the child-pornography charges against him.⁵ Shortly before he entered that

²Complaint, Docket Entry No. 1, p. 4. For purposes of identification, all page numbers refer to the pagination inserted at the top of the page by the court's electronic filing system, CM/ECF.

³Affidavit of Jeremiah Richards ("Richards Affidavit"), attachment 3 to Defendants' MSJ, Docket Entry No. 45-3, p. 3 ¶ 15.

⁴Plaintiff's More Definite Statement, Docket Entry No. 25, p. 3; Complaint, Docket Entry No. 1, p. 4; Letter, attachment 2 to Complaint, Docket Entry No. 1-2, p. 1.

⁵Plaintiff's More Definite Statement, Docket Entry No. 25, pp. 1-2.

plea, Land sent a letter to Lieutenant Myrick at the Montgomery County Jail stating that he had overheard inculpatory remarks made by Wilson and that he wanted to "testify" against him.⁶ According to Land, another officer at the Jail (Sergeant Dotson) contacted the District Attorney's Office by e-mail on December 9, 2013, regarding Land's offer to testify against Wilson.⁷

On December 16, 2013, Wilson returned to his cell following a visit with his criminal defense attorney who, coincidentally, also represented Land.⁸ During this visit Wilson allegedly found out that Land had offered to testify against him, and Wilson began to threaten Land's life and the lives of his family.⁹

On January 7, 2014, Land allegedly sent another letter to Lieutenant Myrick, complaining about Wilson's threats.¹⁰ Myrick, however, failed to intervene or move Land to another area of the Jail.¹¹ Land contends that he was subject to verbal abuse "night and day" and endured a "hostile environment" for a period of 106

⁶Letter, Docket Entry No. 45-1, pp. 6-7; Plaintiff's More Definite Statement, Docket Entry No. 25, pp. 13-16.

⁷Plaintiff's More Definite Statement, Docket Entry No. 25, p. 3.

⁸Complaint, Docket Entry No. 1, p. 4; Plaintiff's More Definite Statement, Docket Entry No. 25, p. 2.

⁹Complaint, Docket Entry No. 1, p. 4.

¹⁰Plaintiff's More Definite Statement, Docket Entry No. 25, p. 5.

¹¹Complaint, Docket Entry No. 1, p. 4.

and day" and endured a "hostile environment" for a period of 106 days until he was transferred to the Texas Department of Criminal Justice ("TDCJ") on March 31, 2014.¹² During this time, Land claims that Wilson threatened him on a daily basis, reminding Land that Wilson could easily find him because Land would have to register as a sex offender for the rest of his life.¹³

Land believes that "Jail Administration" did not move him away from Wilson at the request of prosecutors and that Jail "staff" was "listening in" to overhear threats that could be used against Wilson in court.¹⁴ Land complains that he was used as bait.¹⁵ Land did not ultimately testify against Wilson, who reportedly entered a plea agreement in the case against him.¹⁶

Because of Wilson's threats, Land suffered recurring nightmares and developed ulcers in his stomach due to the mental anguish he experienced.¹⁷ Arguing that his constitutional rights were violated by housing him in a "hostile environment," Land seeks

¹²Id.; Plaintiff's More Definite Statement, Docket Entry No. 25, p. 2 and pp. 7-8 ¶ 5.

¹³Plaintiff's More Definite Statement, Docket Entry No. 25, p. 7.

¹⁴Complaint, Docket Entry No. 1, p. 4; Plaintiff's More Definite Statement, Docket Entry No. 25, p. 6.

¹⁵Plaintiff's More Definite Statement, Docket Entry No. 25, p. 6.

¹⁶Id.

¹⁷Id. at 7.

damages from the defendants under 42 U.S.C. § 1983 and a formal apology for the psychological abuse that he endured.¹⁸

The court authorized service of process and requested an answer to the Complaint from Lieutenant Myrick and Sheriff Henderson.¹⁹ These defendants now move for summary judgment, noting that Land did not exhaust administrative remedies as required by the Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), before filing suit.²⁰ The defendants argue in the alternative that Land's claims fail as a matter of law because he does not show that Lieutenant Myrick violated a clearly established constitutional right and he does not otherwise overcome Myrick's entitlement to qualified immunity.²¹ The defendants also argue that Land has not established the liability of Sheriff Henderson, who is sued in his capacity as a supervisory official.²²

II. Standard of Review

Motions for summary judgment are governed by Rule 56 of the Federal Rules of Civil Procedure. Under this rule a reviewing court "shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is

¹⁸Complaint, Docket Entry No. 1, pp. 3, 4.

¹⁹Order for Service of Process, Docket Entry No. 27; Supplemental Order for Service of Process, Docket Entry No. 34.

²⁰Defendants' MSJ, Docket Entry No. 45, pp. 7-9.

²¹Id. at 9-18.

²²Id. at 18-23.

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