

GRAYS HARBOR COUNTY  
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STATE OF WASHINGTON  
GRAYS HARBOR COUNTY SUPERIOR COURT

ALLAN PARMELEE,

Plaintiff,

v.

DANIEL LIBBY, et al.,

Defendants.

NO. 09-2-01183-1

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

This matter was heard on the Defendants' Motion to Dismiss pursuant to CR 12(b)(6) and/or CR 12(c) on July 28, 2011. The undersigned Judge heard the matter. The claims presented at the motion for dismissal were as follows:

1. Whether Mr. Parmelee's claims should be properly brought as a Personal Restraint Petition in the Court of Appeals and/or a civil rights action in federal court.
2. Whether Mr. Parmelee has sufficiently pled his state tort claims.
3. Whether Mr. Parmelee's claims are frivolous.

Plaintiff Alan Parmelee, *pro se*, appeared telephonically at the hearing and the Defendants appeared in person by their counsel, Andrea Vingo, Assistant Attorney General.

The Court considered the following at the hearing:

1. Plaintiff's Complaint (Docket No. 1);
2. Defendants' Motion to Dismiss, including declarations and exhibits (Docket No. 58);

- 1 3. Plaintiff's Response to Motion to Dismiss (Docket No. 64);
- 2 4. Plaintiff's Motion to Reconsider (Docket No. 71); and
- 3 5. The argument by the parties.

#### 4 I. FINDINGS OF FACT

5 1. Mr. Parmelee is an inmate in the custody of the Washington State Department  
6 of Corrections and is currently serving a felony sentence.

7 2. Mr. Parmelee claims that various Department of Corrections employees in their  
8 individual and official capacities, violated his civil rights, defamed him, harassed him,  
9 outraged him, and "negligently managed" those that allegedly committed these acts.

10 3. Mr. Parmelee spent two pages of his complaint explaining that he "is best  
11 known widely among DOC employees as frequently attempting to expose wrongful and  
12 unlawful treatment of prisoners." He explained that he has been in isolation segregation since  
13 2005 for "trying to correct erroneous policies", "reporting staff misconduct", "issuing public  
14 records request", and "pursuing litigation", but does not set forth any specific incidents in  
15 support.

16 4. Mr. Parmelee also outlined a discussion that he claims he had with Defendant  
17 Ramsey, where Defendant Ramsey agreed to release Mr. Parmelee from segregation if he  
18 could remain infraction free for sixty days.

19 5. Mr. Parmelee indicates that on July 27, 2009, he was threatened by an  
20 unidentified staff, which later led to Mr. Parmelee being infraacted. He also indicated that he  
21 was infraacted by Defendant Bisher in March 2009, which was in retaliation for unidentified  
22 litigation.

23 6. Mr. Parmelee claims that these infractions constituted the claims alleged.

24 7. Mr. Parmelee has made no other allegations regarding the participation of any  
25 other named Defendant.

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II. CONCLUSIONS OF LAW

1. The Plaintiff's claims regarding the conditions of Plaintiff's confinement should be brought as a Personal Restraint Petition in the appropriate Washington Court of Appeals.

2. The Plaintiff has failed to allege a federal civil rights claim under 42 U.S.C. § 1983. This is because he has failed to allege personal participation on behalf of each of the named Defendants, and because he has failed to show the infringement of a constitutional right.

3. The Plaintiff has failed to allege the elements of defamation.

4. The Plaintiff has failed to allege the elements of the tort of outrage.

5. The Plaintiff has failed to allege the elements of harassment.

6. Based on these conclusions, the Plaintiff's claims are dismissed with prejudice.

7. Further, the Court finds that this cause of action was frivolous, and will count as a "strike" under SSB 5024 and/or SHB 1037 (2011 Regular Session) (as yet uncodified in RCW 4.24).

8. Defendants are entitled to costs in the amount of \$200.00 pursuant to CR 54(d)(1) and CR 78(e).

DATED this \_\_\_\_\_ day of DEC 16 2011, 2011.

**GORDON L. GODFREY**

JUDGE GORDON GODFREY  
Superior Court Judge

Submitted by:

ROBERT MCKENNA  
Attorney General

ANDREA VINGO, AAG, WSBA #26183  
Assistant Attorney General