

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ZACHARY SMITH,

Plaintiff,

V.

JOSEPH FITZPATRICK, Commissioner of
Maine Department of Corrections; and SHAWN
D. GILLEN, Chief Deputy and Acting
Aroostook County Sheriff,

Defendants.

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) Civil No. 18-cv-00288-NT
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JOINT MOTION TO STAY PROCEEDINGS

Pursuant to Rule 7(b) of the Federal Rules of Civil Procedure, Plaintiff, Zachary Smith (“Plaintiff”), and Defendant Shawn Gillen, Chief Deputy and Acting Aroostook County Sheriff (“Defendant Gillen”) (collectively, the “Parties”), file this joint motion to stay proceedings against Defendant Gillen until October 23, 2018. On September 25, 2018, Plaintiff’s counsel contacted counsel for Defendant Joseph Fitzpatrick, Commissioner of Maine Department of Corrections, who stated that he does not object to the relief requested in this motion.

BACKGROUND

On July 26, 2018, the Plaintiff filed a civil rights case against Defendant Gillen and Defendant Joseph Fitzpatrick, Commissioner of the Maine Department of Corrections, alleging that the defendants' policies against providing medication-assisted treatment violated the Plaintiff's rights under the U.S. Constitution and the Americans with Disabilities Act. *See* Compl., ECF No. 1 (July 26, 2018). At the time of filing, the Plaintiff had been convicted of a crime in state court, *State v. Smith*, Docket No. ARO-CD-CR-2018-00038, but he did not then know whether he would be incarcerated in state or county custody. *Id.* at ¶¶ 49-51.

Since filing the complaint, it has become clear that the Plaintiff's sentence will not be served in Aroostook County Jail, supervised by Defendant Gillen. Instead, Plaintiff has been sentenced to a term of incarceration of nine months and one day in the Department of Corrections. Based on existing state court orders, Mr. Smith expects to report to custody to the Aroostook County Jail on October 22, 2018, which will then transport him to Maine Department of Corrections custody to serve his sentence. *See, e.g.,* Exhibit 1 (State Court Order).

In an effort to resolve the dispute between the Plaintiff and Defendant Gillen, the parties have entered into a joint stipulation to govern Defendant Gillen's transport of the Plaintiff to Maine Department of Corrections custody. Specifically, the parties have agreed as follows, in relevant part:

1. By the close of business, October 18, 2018, Sheriff Gillen, or his designee, shall cooperate with Mr. Smith, and Mr. Smith shall cooperate with Shawn Gillen or his designee, to complete all processing paperwork, including medical and other administrative forms, that can be completed in advance of Mr. Smith reporting on October 22, 2018.
2. On October 22, 2018, at approximately 9am, Mr. Smith shall report to Aroostook County Jail for processing and transport to the Maine Correctional Center or some other facility designated by the Maine Department of Corrections.
3. On October 22, 2018, Defendant Gillen, or his designee, shall book and process Mr. Smith as quickly as reasonably possible, and shall leave Aroostook County Jail no later than 11am to transport Mr. Smith to the appropriate Department of Corrections facility.

4. No later than October 23, 2018, counsel for Defendant Gillen shall communicate with counsel for Mr. Smith to confirm that Mr. Smith has been turned over to the custody of the Maine Department of Corrections.

DISCUSSION

Although “entry of a stay without explanation is disfavored,” *Bowersox v. Williams*, 517 U.S. 345, 346 (1996), there is a good explanation for this stay because it may enable the Parties to resolve the case with respect to Sheriff Gillen without further Court involvement. As described above, the Parties have reached a proposed resolution of the case with respect to Defendant Gillen. Specifically, so long as Defendant Gillen complies with the agreement to provide immediate transport to the Maine Department of Corrections custody, as detailed above, the Parties agree that the case with respect to Defendant Gillen can be dismissed without prejudice. Because the transport is scheduled to take place on October 22, 2018, the Parties should know by October 23, 2018, whether the case can be dismissed without prejudice based upon the Parties’ stipulations. Accordingly, good cause exists for staying proceedings with respect to Defendant Gillen until October 23, 2018.

CONCLUSION

For these reasons, the Parties respectfully request that the Court grant this joint motion to stay proceedings with respect to Defendant Gillen until October 23, 2018.

Respectfully submitted,

Dated: September 25, 2018

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*On behalf of Defendant Shawn Gillen,
Chief Deputy and Acting Aroostook County
Sheriff*

CERTIFICATE OF SERVICE

The undersigned certifies that she has electronically filed this date the foregoing Joint Motion to Stay Proceedings with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record. This filing is available for viewing and downloading from the ECF system.

Dated: September 25, 2018

/s/ Emma E. Bond

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