

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

TONY A. WILSON, :  
 :  
 Plaintiff, :  
 :  
 v. : Civil Action No. 99-614-JJF  
 :  
 DEPARTMENT OF CORRECTION OF :  
 DELAWARE, ALAN MACHTINGER, :  
 JOE PAESANI, MICHAEL :  
 MCFARLAND, RON TURNER, :  
 THOMAS G. BAILOR, JAMES :  
 SUPIETT, MR. KEEN, FOREST :  
 JACOBS, MR. KUMINSKI, DAVE :  
 STEBBINS, PINKERTON, INC., :  
 UNIDENTIFIED, :  
 :  
 Defendants. :

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Tony A. Wilson, Ocala, Florida.  
Pro Se Plaintiff.

Stuart B. Drowos, Esquire, Deputy Attorney General, DELAWARE  
DEPARTMENT OF JUSTICE, Wilmington, Delaware.  
Attorney for Defendants.

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**MEMORANDUM OPINION**

March 30, 2001  
Wilmington, Delaware.

**Farnan, District Judge**

Presently before the Court is a Motion to Dismiss filed by Defendants Department of Corrections, Alan Machtinger, Joseph Paesani, Michael McFarland and Ron Turner (collectively "State Defendants") (D.I. 32). Plaintiff Tony A. Wilson filed the instant action alleging violations of Title VII of the Civil Rights Act of 1964 and Fourteenth Amendment Due Process violations under 42 U.S.C. § 1983. State Defendants seek dismissal pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted. For the reasons set forth below, State Defendants' Motion to Dismiss (D.I. 32) will be granted.

**BACKGROUND**

Plaintiff applied for, and was offered, a position with the Delaware Department of Corrections ("DOC") as a Probation and Parole Officer on January 15, 1996. (Complaint, D.I. 3, App. 1). Plaintiff's offer was conditional and required him to file a Personal History Statement ("PHS") with the Department of Corrections. Id. All DOC offers of employment are contingent upon favorable background investigations. This paperwork was completed and returned to Defendants on February 2, 1996. Id. As a result of the background investigation, Defendant McFarland made a recommendation to rescind Plaintiff's offer of employment. Id. On March 12, 1996, Plaintiff received a letter from State Defendants stating that

his offer of employment had been rescinded. Id. Plaintiff alleges that the background investigation information was untrue and that State Defendants rescinded the employment offer solely because of Plaintiff's race. Plaintiff is a black male.

On March 2, 1998, Plaintiff filed charges with the Delaware Department of Labor and the Equal Employment Opportunity Commission ("EEOC"). Id. The EEOC investigator was unable to conclude that the information obtained established a violation and notified Plaintiff that his file would be closed on May 26, 1998. Id. Plaintiff filed this case against State Defendants on July 7, 1998, within the ninety day time frame set forth in the EEOC dismissal notification. Id.

By his Complaint, Plaintiff alleges that State Defendants' "rescinding of the Probation and Parole employment offer and Defendants' general hiring practices are racially motivated and designed" in violation of Title VII of the Civil Rights Act of 1964. (D.I. 3, at 1). Plaintiff further asserts a Section 1983 claim alleging violations of his Fourteenth Amendment Due Process rights.

#### **STANDARD OF REVIEW**

Pursuant to Rule 12(b)(6), the Court may dismiss a complaint for failure to state a claim upon which relief may be granted. Fed. R. Civ. P. 12(b)(6). The purpose of a

motion to dismiss is to test the sufficiency of a complaint, not to resolve disputed facts or decide the merits of the case. See Kost v. Kozakiewicz, 1 F.3d 176, 183 (3d Cir. 1993). Thus, when considering a motion to dismiss, a court must accept as true all allegations in the complaint and must draw all reasonable factual inferences in the light most favorable to the plaintiff. See Neitzke v. Williams, 490 U.S. 319, 326 (1989); Piecknick v. Pennsylvania, 36 F.3d 1250, 1255 (3d Cir. 1994). However, the court is "not required to accept legal conclusions either alleged or inferred from the pleaded facts." Kost, 1 F.3d at 183 (citation omitted). Dismissal is only appropriate when "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claims which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45 (1957).

## **DISCUSSION**

### **I. Plaintiff's Claim Under Title VII.<sup>1</sup>**

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<sup>1</sup> As a preliminary matter, the Court notes that Defendants Department of Corrections, Paesani, McFarland and Turner were not officially served pursuant to Federal Rule of Civil Procedure 4(m). Rule 4(m) provides that "if service of summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice." Fed. R. Civ. P. 4(m). To date, Plaintiff has neither served these four State Defendants nor requested additional time for service from the Court. While acknowledging that Rule 4(m) is dispositive with regard to these four State Defendants, the Court will nevertheless address the issues raised by the motion to dismiss with regard to all State Defendants.

Racial discrimination claims under Title VII of the Civil Rights Act of 1964 are analyzed under the burden-shifting framework set forth in McDonnell Douglas v. Green, 411 U.S. 792, 802 (1973). In order to survive a motion to dismiss, Plaintiff must allege sufficient facts to establish a prima facie case of discrimination by showing: (1) that Plaintiff is a member of a protected class; (2) that Plaintiff was qualified for a job for which the employer was seeking applicants and that, despite his qualifications, he was rejected; and (3) that non-members of the protected class were treated more favorably. See Ezold v. Wolf, Block, Schorr and Solis-Cohen, 983 F.2d 509, 522 (3d Cir. 1992); McCay v. Delaware State Univ., Civ.A.No. 99-219-SLR, 2000 U.S. Dist. LEXIS 14653 (D. Del. Sept. 29, 2000).

As an initial matter, the Court notes that Plaintiff's Title VII claim, although asserted against State Defendants Machtinger, McFarland, Turner and Paesani in their official and individual capacities, is only relevant to Plaintiff's claims against the Department of Corrections. Title VII does not allow for suits against individuals. Title VII only allows for suits against employers based on unlawful employment practices. 42 U.S.C. § 2000e-2 (1999).

Upon reviewing the Complaint, the Court concludes that Plaintiff fails to allege any facts to demonstrate that non-members of the protected class were treated more favorably in

the present situation. Accordingly, the Court concludes that Plaintiff has failed to establish a prima facie case for employment discrimination under Title VII. Thus, State Defendants' motion to dismiss Plaintiff's Title VII claim will be granted.

## **II. Plaintiff's Claim Under 42 U.S.C. § 1983.**

Plaintiff also alleges that State Defendants violated his Fourteenth Amendment Due Process rights by failing to provide him with the opportunity to rebut information discovered as a result of a background check. Procedural due process rights apply when a plaintiff has been deprived of a property interest, as defined by state law. Property interests are defined by state law, not by the Constitution. See Board of Regents v. Roth, 408 U.S. 564, 576 (1972).

Under Delaware law, all newly hired DOC personnel serve a six month probationary period. See 11 Del. C. § 6506(b). The Court of Appeals for the Third Circuit has held that an officer does not have a property interest in their position during the probationary period. See Blanding v. Pennsylvania State Police, 12 F.3d 1303, 1307 (3d Cir. 1993). In this case, Plaintiff was not even on probation because he was never hired by the Department of Corrections.

Moreover, Plaintiff signed a "Conditions of Employment" form, whereby Plaintiff acknowledged that his selection as a Probation and Parole Officer was tentative. (D.I. 3 at 30).

In order to make the tentative offer permanent, Plaintiff had to successfully and favorably complete a series of conditions. Id. Because Plaintiff's employment offer was tentative and conditional, the Court concludes that Plaintiff did not have a protected property interest in his conditional "offer" of employment and, as such, fails to state a claim for a Fourteenth Amendment Due Process violation in order to sustain his Section 1983 claim. Thus, State Defendants' motion to dismiss Plaintiff's Section 1983 claim will be granted.

### **III. Plaintiff's State Law Claims**

Plaintiff has asserted a defamation claim against State Defendants. When a court dismisses a plaintiff's federal claims which form the basis of jurisdiction under 28 U.S.C. § 1343, the Court loses subject matter jurisdiction over any state law claims. See United Mine Workers v. Gibbs, 383 U.S. 715, 726 (1965). State law claims should be dismissed if the federal claims are dismissed before trial. Id. The Court has dismissed Plaintiffs federal claims asserted against all State Defendants under Title VII and Section 1983. Because the federal claims will be dismissed, the Court has no subject matter jurisdiction over Plaintiff's state law defamation claims. Accordingly, State Defendants' motion to dismiss Plaintiff's defamation claims will be granted.

### **CONCLUSION**

For the reasons discussed, State Defendants' Motion to

Dismiss (D.I. 32) will be granted.

An appropriate Order will be entered.