

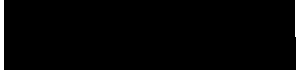
1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE SOUTHERN DISTRICT OF OHIO**
3 **WESTERN DIVISION**
4

5 **Christopher Knecht,**) **Case No.: 1:12CV763**
6)
7 **Plaintiff,**) **Honorable S. Arthur Spiegel**
8)
9 **vs.**) **PLAINTIFF'S MEMO CONTRA**
10) **DEFENDANTS' MEMO IN RESPONSE**
11) **TO PLAINTIFF'S OBJECTIONS TO**
12) **SUPPLEMENTAL REPORT AND**
13) **RECOMMENDATION**
14)

15 Come now the *pro se* plaintiff with his memo *contra* defendants' memorandum in response
16 (Doc. 38) to plaintiff's objections (Doc. 37) to the Magistrate's Supplemental Report and
17 Recommendation (Doc. 35), pursuant to Rule 72 (b) (2), Federal Rules of Civil Procedure.

18
19 Respectfully submitted,

20 Christopher Knecht

21 
22 Plaintiff in Pro Se

23 **Certificate of Service**

24 A copy of the foregoing was sent electronically to counsel for the defendants this 20th day of
25 August, 2014, at jessica.powell@cincinnati-oh.gov.

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27 Plaintiff
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MEMORANDUM

Defendants have submitted a memorandum in response to plaintiff's objections (Doc. 38), which require some clarification surrounding their understanding or the lack thereof as it relates to this case.

1. Defendants contend that only now is plaintiff indicating that he is NOT bringing state law claims against the defendants.

Plaintiff's Objections to the Report and Recommendation (Doc. 23) – under the argument section – indicates that plaintiff is not and did not bring state law claims against the defendants, in which as he pointed out under that section, would involve invoking the Court's pendent jurisdiction, much like his Memo Contra to defendants' motion to dismiss (Doc. 12) which specifically states that "[p]laintiff didn't bring state law claims against the defendants."

2. Defendants contend that plaintiff's due process claim is without merit.

In short, defendants argue that since they allegedly corrected the inaccuracy they now admit to creating, that such clears them of any liability in this case because plaintiff cannot show or fails to demonstrate that defendants refused to correct his criminal file.

Defendants' argument lies upon a fallacy. In other words, defendants are basically saying that if they convicted plaintiff and had him placed in prison without affording him a right to trial or to be heard by a judge prior to such a conviction, and after he complains about such, they afford him that right, that somehow plaintiff has been made whole despite the subjective issues or conditions he has been subjected to. If that was logical thinking, then every person imprisoned later to be exonerated wouldn't have a cause of action for false imprisonment or whatever legal theory they use because hey, the state made them whole after the fact by correcting such an inaccuracy *per se*.

1 And that is the issue: *After the fact*. Defendants only allegedly made the correction *after* plaintiff
2 – by chance - noticed the inaccuracy. They did not alter his criminal history *and inform him they*
3 *were doing so* as required by 28 C.F.R. § 20.21 (g), which would have allowed plaintiff to
4 request they correct the erroneous information *before* they prepared and disseminated such, nor
5 have they yet to indicate to the plaintiff here in this action or otherwise that they notified other
6 law enforcement agencies of the inaccuracy for the purposes of correcting that inaccuracy, which
7 compounds the fact that they failed to comply with their duties as noted under 28 C.F.R. § 20 *et*
8 *seq.* For all plaintiff knows, the State of Ohio and the FBI have criminal history records on
9 plaintiff prepared and disseminated by the defendants which contain inaccuracies.

10 Defendants’ argument as it relates to the notice and opportunity to be heard *before* adverse action
11 is taken is fallacious and their conclusion is false. The notice and opportunity to be heard as
12 outlined under 28 C.F.R. § 20 *et seq.* means *prior* to preparing and disseminating criminal
13 records, defendants would have to provide the record to the plaintiff, and if inaccuracies are
14 noted, he can request that such be corrected. That did not happen at all in this case at bar and as
15 a result plaintiff has been deprived of rights, privileges and immunities secured by the United
16 States Constitution as mentioned within his original and amended complaints.

17 In *Northeastern Florida Chapter of the Associated General Contractors of America v. City of*
18 *Jacksonville, Florida*, 508 U.S. 656 (1993), the Supreme Court held that it is “well settled that
19 the voluntary cessation of a challenged practice does not deprive a federal court of its power to
20 determine the practice’s legality, because a defendant is not precluded from reinstating the
21 practice.” 508 U.S., at 662.

22
23 Defendants even stated before this Court (Doc. 9) that they do nothing other than compile,
24 maintain, and disseminate criminal records provided by any number of law enforcement agencies
25 in which they deal with, negating the fact that they actually did do more than maintain records
26 from other law enforcement agencies, as noted in defendants’ most recent filing (Doc. 38) where
27 they acknowledge that fact.
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3. Pruett v. Levi

Defendants’ word choice of the opinion in *Pruett v. Levi*, 622 F. 2d 256 (6th Cir. 1980), suggesting that they are only required to “take ‘reasonable measures to safeguard the accuracy of the information in its criminal files before disseminating them’” (Doc. 38, at p. 5); quoting, *Pruett, supra*, at 257, is misleading. Defendants state that, “[t]here are no facts alleged to support that the Defendants acted unreasonably,” and go on by stating that to the contrary they fixed the inaccuracies *albeit afterwards*, when plaintiff complained. (Doc. 38, at p. 6). However, the key point defendants left out in quoting *Pruett* is that the “reasonable measures” they are to take are those proscribed by 28 C.F.R. § 20 *et seq.* in which *Pruett* held as being “consistent with, and define, that duty.” *Pruett, supra*. at 257 (internal citations omitted). Plaintiff’s original and amended complaint clearly indicates that defendants acted “unreasonable” when plaintiff alleges that they acted contrary to the Fourteenth Amendment to the United States Constitution.

And those “reasonable measures” as defined under 28 C.F.R. § 20 *et seq.* states that the defendants “are required to formulate plans which will insure the completeness and accuracy of criminal records, 28 C.F.R. § 20.21(a); limit their dissemination, 28 C.F.R. § 20.21(b); provide the individual with access to his file, an opportunity to appeal the denial of a request, 28 C.F.R. § 20.21(g); and require the state or local agencies to inform the FBI and other agencies of any corrections, 28 C.F.R. § 20.21(g).” *Pruett* at 257.

4. Harm Plaintiff Suffered

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Defendants are attempting to address issues not relevant in a motion to dismiss, to-wit; the injuries sustained by plaintiff, since this issue goes to the damages or injuries sustained by plaintiff while a motion to dismiss as brought specifically by the defendants are only challenging whether plaintiff states a claim upon which relief could be granted.

In fact, this issue should be address through discovery. Defendants are the ones in possession of information in which plaintiff is not able to gather, such as the recent granting of a motion for an

1 extension of time (Doc. 36) denying discovery. Without discovery, plaintiff cannot put all the
2 pieces of the puzzle together. The theory plaintiff has is that as a result of the enactment of Ohio
3 Senate Bill 2 in 1996, which in part, restructured Ohio's criminal statutes, defendants attempted
4 to update their criminal history records by cross-referencing or including the newest definition of
5 aggravated burglary in plaintiff's criminal records. Perhaps defendants and/or its agents did this
6 to all criminal records they maintain.

7 In support of that theory, plaintiff points to the 1983 aggravated burglary statute he was
8 convicted under, and the 1996 aggravated burglary statute currently in effect:

9 10 **Aggravated Burglary**

11 In relevant part, Ohio's 1983 aggravated burglary statute¹ states:

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13 "(A) No person, by force, stealth, or deception, shall trespass in an
14 occupied structure, as defined in section 2909.01 of the Revised
15 Code, or in a separately secured or separately occupied portion
16 thereof, with purpose to commit therein any theft offense, as
17 defined in section 2913.01 of the Revised Code, or any felony,
18 when any of the following apply:

19 " * * *

20 **"(3) The occupied structure involved is the permanent or**
21 **temporary habitation of any person, in which at the time any**
22 **person is present or likely to be present."**

23 In contrast, Ohio's current aggravated burglary statute² states:

24
25 (A) No person, by force, stealth, or deception, shall trespass in an
26 occupied structure or in a separately secured or separately

27 ¹ ORC §2911.11(A) (3) (115th Ohio General Assembly, Senate Bill 210, Effective July 1, 1983). Plaintiff
28 was convicted under 2911.11(A) (3).

² ORC §2911.11 Effective July 1, 1996.

1 occupied portion of an occupied structure, when another person
2 other than an accomplice of the offender is present, with purpose to
3 commit in the structure or in the separately secured or separately
4 occupied portion of the structure any criminal offense, if any of the
5 following apply:

6 **(1) The offender inflicts, or attempts or threatens to inflict**
7 **physical harm on another;**

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9 (2) The offender has a deadly weapon or dangerous ordnance on or
10 about the offender's person or under the offender's control.

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13 (Emphasis added by plaintiff). The 1996 version of Ohio's aggravated burglary statute requires
14 a showing that either the offender has a deadly weapon or "inflicts, or attempts or threatens to
15 inflict physical harm on another." If the Court will look at plaintiff's exhibit A-1 attached to his
16 *Memo Contra* Defendants' Motion to Dismiss (Doc. 12), it's clear that the felony offense in
17 question indicates that plaintiff inflicted harm, which is now a requirement for a conviction
18 under the 1996 aggravated burglary statute, with the older version of that statute not containing
19 the element of harm to his victim(s) in order to be convicted; the mere possibility of someone
20 being present was acceptable for a conviction under that 1983 statute.

21 To the extent above, plaintiff believes that the defendants either altered criminal records to
22 reflect the changes in Ohio's criminal statutes – as far back as 1996 – or someone purposely and
23 maliciously entered the information: without conducting discovery, plaintiff can only infer that
24 areas of employment, housing, police interaction, and social service denials were all based upon
25 the information defendants prepared and disseminated. In fact, plaintiff alleges in his affidavit
26 that one property manager would not rent to him due to his belief upon conducting a background
27 search that plaintiff was in prison for harming someone (Doc. 12 at Knecht Affidavit), which
28 coincides with the 1996 aggravated burglary statute requiring the element of harm being

1 established. See also, Schroeder Affidavit (Doc. 12). Until discovery is conducted, plaintiff can
2 only draw legally permissible inferences that the inaccurate information has been detrimental to
3 the plaintiff for years and years.

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5 **5. Inaccuracies with the Ohio Department of Rehabilitation and Correction; Hamilton**
6 **County, Ohio Clerk of Courts**

7 Plaintiff was informed in 2008 that the Ohio Department of Rehabilitation and Correction (DRC)
8 had him on their website as being on parole. Plaintiff contacted the DRC and had them remove
9 that inaccurate information. Plaintiff did not sue the DRC for maintaining such information
10 since he thought it would be hard to establish a violation of his 'rights' considering that he was
11 indeed on parole at one time and by inaccurately maintaining that he was still on parole would
12 not take away from that original fact.

13
14 Plaintiff did bring legal action against the Hamilton County, Ohio Clerk of Court for maintaining
15 criminal history information about the plaintiff indicating that he had been convicted of four
16 felony offenses, but later dismissed that suit due to personal issues at that time. See, *Knecht v.*
17 *Hartmann*, 08CV16175 (Ham. Co. Ohio 2008).

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19 **6. Conclusion**

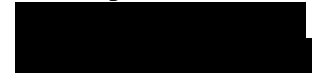
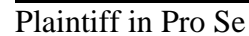
20 Plaintiff has indeed stated a claim upon which relief can be granted. Defendants have a duty to
21 maintain accurate criminal records. Defendants failed that duty when they prepared a criminal
22 record outside stated regulations and disseminated that information to nearly anyone who
23 requested such without first affording plaintiff the opportunity to review it and request
24 corrections be made. As a result, plaintiff has been denied employment, housing, social service
25 assistance; heightened police interaction, and cannot even submit his petition to the Ohio Adult
26 Parole Authority seeking clemency or a pardon for his actual felonies due to that inaccuracy in
27 which defendants still have yet to inform plaintiff as being corrected and submitted to the FBI as
28 well as the State of Ohio. Plaintiff draws a legal inference that defendants actions and inactions

1 directly attributed to the injuries and damages he has sustained as alleged in the complaint. He
2 supports those inferences based on the exhibits he has attached in addition to sworn statements
3 and an original and amended complaint where all reasonable facts should be regarded as true for
4 the purposes of the pending dispositive pleadings, especially in light of discovery being banned
5 during the pendency of this case either by this Court (Doc. 35) or the defendants themselves
6 (Doc. 12 at exhibit A-4).

7 Simply correcting the inaccuracy doesn't negate the damages and injuries plaintiff has sustained,
8 and this Court should dismiss defendants' motions to dismiss and reject the Magistrate's Report
9 and Recommendation.

10 Respectfully submitted,

11 Christopher Knecht

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14 Plaintiff in Pro Se