

Nelms was the Sheriff, and Van Meter was Holland's immediate superior. Van Meter and Holland were both assigned to management positions at the DRILL Academy, a "boot camp"-style juvenile institution run by the Sheriff's Office. Van Meter was responsible for the overall operation of the facility; Holland served as "second-in-command," overseeing daily matters and supervising the instructors who interacted directly with the juveniles candidates.

On March 9, 2003, Sheriff Nelms visited the DRILL Academy and met with Holland privately in Holland's office. During this meeting, Nelms asked for Holland's assessment of Van Meter's job performance and assured Holland that any comments would be held in confidence. In response, Holland relayed "problems that other drill instructors had come to [him] with about Major Van Meter." (Def.'s mot. for sum. judg., Ex. 1 at 25.) These complaints related to Van Meter's managerial style, which led to a lack of direct involvement with the program's juveniles and infrequent contact with the DRILL Academy's instructors. (*Id.* at 25-26.) Holland reported that Van Meter "would go for long periods of time without going over to the barracks buildings," "didn't want to be involved in any of the training," and "had not attended any of the visitation or the church calls." (*Id.*) Holland also told Nelms that "the guys would like to spend more time with him" and that Van Meter "probably couldn't identify two or three out of the candidates that we had in the entire group." (*Id.*) Although Holland agreed with a number of these complaints, in his conversation with Nelms, he acted primarily as a conduit conveying the grievances of his subordinates.

Holland contends that his previously cordial relationship with Van Meter abruptly

deteriorated because Nelms told Van Meter about his discussion with Holland. On March 22, a dispute arose between Holland and Van Meter during a discussion of workplace matters held in Van Meter's office. Holland returned to his own office when he felt the conversation was concluded but Van Meter followed and stated that the discussion was not finished. Holland also recalls Van Meter saying, "you need to go home tonight and decide whether or not you want to be a part of this program." *Id.* at 20. Disturbed by what he perceived as an unwarranted admonishment, Holland visited Sheriff Nelms who suggested a meeting among the three of them the following day.

On March 23, 2004, Nelms met privately with Van Meter before inviting Holland to join them in Nelms's office. When Holland entered, Nelms advised him that he was relieved of his position with the DRILL Academy; he declined to explain his reasons for that decision. Nelms then instructed Holland to "go home, take comp time until I decide what I'm going to do with you." (*Id.* at 42.) Although Nelms planned to reassign Holland to different duties within the Sheriff's Office, Holland never returned to duty.

Holland's dismissal gathered attention from the local paper, the *Daily Times*. Holland himself spoke to local reporters about his disappointment at being removed from his role at the DRILL Academy. *E.g.*, John Vandiver, *DRILL official: No reason given for ouster*, *Daily Times*, March 20, 2004 at A1 ("I don't think anybody can question my dedication or commitment to the program.") ("Holland said he is devastated and bewildered by the March 23 decision"). Despite this media spotlight, Holland concedes that Nelms and Van Meter refrained from making public statements about his situation.

(Pl.'s comp. ¶ 11-14.) (“Nelms steadfastly refused to provide any explanation or justification of his action in relieving Mr. Holland of his duties and suspending him.”).

Van Meter did inform a local paper that “we were having significant performance problems with Lieutenant Holland[,]” Tristan Schweiger, *Ex-DRILL supervisor files additional complaint*, Daily Times, April 6, 2005, and Nelms told the same paper that Holland had been fired. John Vandiver, *DRILL administrator released from post*, Daily Times, April 6, 2005.

The day after his removal from responsibilities with the DRILL Academy, Holland went on medical leave. He was hospitalized for a severe depressive episode almost immediately afterwards. He was admitted for at least two weeks, between March 26 and April 13, 2004, and then again between May 3 and May 10, 2004.

Holland sought reinstatement in May after securing clearance from his physician and treating psychiatrist. Nevertheless, he was required to undergo a psychological fitness for duty examination since he suffered a major mental health problem. As part of that evaluation, Holland visited Dr. Jeffrey Janofsky (“Janofsky”), who assessed Holland’s psychiatric status as it affected his ability to perform the duties of a sworn officer. Janofsky submitted a written report to Nelms. Nelms believed that Janofsky’s report was ambiguous in that it suggested, but did not clearly state, that Holland’s illness would not interfere with his work. Nelms followed up with Janofsky who advised that, based on Holland’s psychiatric history, his prognosis included a one-third chance of relapse. Nelms felt that he was “responsible to the people of Wicomico County and to the health and welfare of [his] employees to return a healthy deputy to the streets armed with

a weapon.” (Nelms’ dep. at 50.) Thus, without complete assurance of Holland’s permanent recovery, Nelms did not want to return him to duty. Holland was offered the opportunity to resign with severance pay, and when he declined he was terminated. Holland’s personnel file states that he was terminated because he was not psychologically fit for duty.

II.

Holland initially filed distinct claims for violations of the First and Fourteenth Amendments in this court on June 28, 2006. I granted defendants’ motion to dismiss in part on March 10, 2007, and then, after the completion of discovery, I granted summary judgment against Holland on February 25, 2008. (Docs. 26 & 42.) Holland appealed to the Fourth Circuit, which affirmed this court’s judgment as to plaintiff’s First Amendment claim. *See* 307 Fed.Appx. 746, 2009 WL 122575 (4th Cir. Jan. 20, 2009). However, the Fourth Circuit vacated and remanded the judgment of dismissal as to the Fourteenth Amendment claim. *Id.* On February 16, 2009, I ordered the parties to engage in further briefing in accordance with the Fourth Circuit’s mandate. (Doc. 50.) Subsequently, defendants filed the pending motion for summary judgment.

III.

Holland alleges that defendants infringed his Fourteenth Amendment liberty interest in avoiding public announcement of false reasons for his suspension and termination. *See Sciolino v. City of Newport News*, 480 F.3d 642, 645-46 (4th Cir. 2007), *cert. denied*, 128 S. Ct. 805 (2007); *see also Jackson v. Clark*, 564 F.Supp.2d 483, 490 (D.Md. 2008). Government employees have a constitutionally protected liberty interest

in their good reputation, and this liberty interest is implicated by public announcement of false reasons for an employee's discharge. *Johnson v. Morris*, 903 F.2d 996, 999 (4th Cir. 1990). To sustain a reputational claim under the Fourteenth Amendment, Plaintiff must establish that the statements made about him: (1) placed a stigma on his reputation; (2) were made public by his employer; (3) were made in conjunction with his termination; and (4) were false. *Sciolino*, 480 F.3d at 646; *Jackson*, 564 F.Supp.2d at 490.

IV.

A.

As a threshold matter, Holland's claim against the State of Maryland fails. The State is not a "person" for the purposes of 42 U.S.C. §1983. *Will v. Michigan Dept. of State Policy*, 491 U.S. 58, 64 (1989). Holland concedes this issue and does not even mention it in his response to defendants' motion for summary judgment.

B.

As to the Fourteenth Amendment claim against the individual defendants, Holland provides a skeletal argument replete with conclusory statements and unsupported assertions. He states his "cardinal allegations" as follows:

Sheriff Nelms steadfastly refused to provide any explanation or justification of his action in relieving Mr. Holland of his duties and suspending him. His actions in removing Mr. Holland were widely publicized, and created the public impression Mr. Holland had been removed for misconduct . . . although Mr. Holland had been medically cleared to return to work, Sheriff Nelms terminated Mr. Holland October 7, 2004, asserting falsely that the fitness for duty evaluation indicated Mr. Holland no longer met the requirements for his position. As a result of the notoriety from his wrongful suspension and termination, Mr. Holland was stigmatized and found that his opportunities for reemployment in a law enforcement position were greatly diminished . . . as a result of Defendants' wrongful actions, Mr.

Holland has been forced to accept employment of diminished status and at a rate of pay far below what he had achieved as a Lieutenant in the Sheriff's Department.

(Pl.'s resp. to def.'s mot. for sum. judg. at 2-3.) Additionally, Holland states that Van Meter informed a local paper that "we were having significant performance problems with Lieutenant Holland (*Id.* at 4.), and that Nelms told the same paper that Holland had been fired. (*Id.*)

Holland's claims fail because, as a matter of law, he cannot establish falsity, the fourth element of a Fourteenth Amendment reputational claim. Holland highlights three potential statements from defendants: (1) Nelms' statement that Holland had been fired; (2) Nelms's statement that Holland was eventually terminated because his fitness evaluation indicated that he was no longer fit for duty; and (3) Van Meter's assertion about significant performance problems. There is no fact issue regarding the veracity of any of these statements.

Nelms' statement that Holland had been fired is true. It is undisputed that Nelms fired Holland on October 7, 2004. In his statement, Nelms does not stray from the straightforward fact that Holland was fired, "declin[ing] to explain Holland's termination; citing personnel rules." (*Id.*, Ex. B.)

Nelms' statement about Holland's fitness for duty is also true. After Holland was placed on mandatory leave, he was admitted as an inpatient to the Peninsula Regional General Hospital Psychiatric Unit on March 26, 2004. (Def.'s mot. for sum. judg., Ex. 4 at 9.) He was diagnosed with severe, recurrent depression and he had suicidal thoughts. (*Id.*) Holland received multiple electroconvulsive therapy treatments. *Id.* He appeared

to improve, and was released on April 13, 2004, but then relapsed and was re-admitted on May 3, 2004. (*Id.*) Throughout this period, Holland continued to be treated with electroconvulsive therapy. (*Id.*)

Holland concedes that he continued to suffer from depression. (*Id.*, Ex. 1 at 51.) And when he underwent a required fitness for duty exam, Dr. Janofsky, his examining doctor, noted that Holland had a chance of falling back into depression. Janofsky wrote that “Holland’s future risk to himself with his service weapon can be minimized by Holland continuing in mental health treatment where he can be continually reassessed for possible return of his major depressive symptoms.” (*Id.*, Ex. 4.) Nelms interpreted this assessment to mean that Holland’s depression could recur, and that Holland required monitoring in order to protect the public (and Holland) from harm. (*Id.*, Ex. 2 at 53.) Acting within a range of discretion he undoubtedly enjoyed, Nelms therefore decided that Holland’s mental difficulties made him unfit to carry a loaded service weapon and serve as a sworn law enforcement officer. Holland concedes that he lacks a shred of evidence (other than his own personal belief) to discredit Nelms’ genuine and sincere belief that he was not fit for duty. (*Id.*, Ex. 1 at 93-96, 130.)

Finally, it is clear that, in the view of his superiors, Holland had “performance problems.” Holland conceded that around the third week of March, he refused a direct order from Van Meter to discipline a subordinate. (*Id.*, Ex. 4 at 8 & Ex. 5.) Van Meter documented additional problems: (1) Holland failed to produce a report on the use of restraints of juveniles as requested by Van Meter; (2) he abruptly left meetings before he was excused; and (3) he often responded explosively and angrily when faced with

adverse situations such as the discussion about home visitations. (*Id.*, Ex. 6.) Holland does not dispute these allegations with any facts – he merely offers bald conclusions and testimonials that he performed his job well. Although Holland was successful at his job in some ways, is it undisputed that he had “performance problems.”

V.

Based on the above analysis, it is clear as a matter of law that no reasonable juror could reasonably conclude that defendants violated Holland’s right to due process; Defendants’ motion for summary judgment shall be granted.

Filed: July 2, 2009

/s/
Andre M. Davis
United States District Judge