

STATE OF VERMONT

SUPERIOR COURT  
Orleans Unit

CIVIL DIVISION  
Docket # 225-8-19 Oscv

GARRETT CORNELIUS,  
Plaintiff

v.

CITY OF NEWPORT,  
Defendant

DECISION

Motion for Summary Judgment

The City of Newport seeks judgment as a matter of law that Plaintiff Garrett Cornelius is not entitled to damages based on a claim of violation by City law enforcement officers of civil rights guaranteed by Article 11 of the Vermont Constitution. In support of its Motion, the City filed a Statement of Undisputed Facts, and Mr. Cornelius filed no opposition raising any disputes as to material facts, leaving those facts undisputed for purposes of this Motion. The facts set forth are relied on by the court in ruling on this motion, and as they are undisputed, they need not be repeated here.

In the City's Supplemental Memorandum filed May 25, 2021, the City acknowledged that the doctrine of claim preclusion, asserted in the original memorandum of law with the Motion, would not attach to this case as a result of the disposition by the Supreme Court in its May 7, 2021 decision in *Garrett Cornelius v. State*, No. 2020-227. This leaves the City's basis for its Motion for Summary Judgment as its second claim: that Mr. Cornelius is not entitled to a judgment on a claim for violation of civil rights pursuant to Article 11 of the Vermont Constitution. The City argues that "summary judgment in the City's favor is nonetheless appropriate here for the same reasons articulated by Judge Bent" [in his trial court decision of July 21, 2020 in Docket # 224-8-19 Oscv, submitted as Exhibit R].

As set forth by Judge Bent in his July 21, 2020 ruling, a plaintiff seeking damages based on a law enforcement officer's alleged violation of Article 11 of the Vermont Constitution must prove three elements. These are established in *Zullo v. State*, 2019 VT 1 at ¶ 55:

- a) The officer violated Article 11
- b) There is no meaningful alternative remedy in the context of that particular case
- c) The officer either knew or should have known that the officer was violating clearly established law or the officer acted in bad faith.

The City relies on Judge Bent's decision but a reason given by Judge Bent for denial of the Motion to Dismiss in that case is inapplicable in this case: his decision was to not "extend the reasoning and logic of *Zullo* to a case where he alleges the State's Attorney – not an officer –

unlawfully seized him and then brought charges against him that were ultimately dismissed because the statute did not apply to him.” (Bent Decision, page 4). This case does not seek extension of *Zullo* to claims against a prosecutor; it is a claim against the City based on the conduct of its law enforcement officers. *Zullo* specifically applies to the conduct of law enforcement officers.

Another portion of Judge Bent’s ruling that the City relies on is the statement that “*Zullo* was clear the general remedy is a criminal process remedy, such as the exclusionary rule. This court also concludes criminal process motion practice suffices. Mr. Cornelius sought and received relief in the criminal case.” *Id.* However, the Supreme Court in *Zullo* was not called upon to rule that criminal process remedies suffice where a person spends days in jail deprived of liberty because of a civil rights violation. The second element of *Zullo* is whether there is a “meaningful alternative remedy *in the context of the particular case.*” (Emphasis added.) This court does not accept that *Zullo* compels a principle of law that criminal motion practice, which takes days or more and can result in a person spending extended time in jail, is a meaningful remedy for the complete loss of liberty during that period, at least not for purposes of ruling on summary judgment. *Zullo* does not compel such a result, and no other legal authority has been supplied for such a ruling.

It is relevant that Judge Bent was applying a different standard in *Cornelius II* than is applicable here. Judge Bent was ruling on a Motion to Dismiss, so the issue was whether Plaintiff had made allegations sufficient to address each of the necessary elements. In this circumstance, the issue is whether there are undisputed facts to support a judgment as a matter of law that Mr. Cornelius has no right to any remedy for a violation of civil rights. That is what the City seeks. Thus, there must be sufficient facts to support such a ruling of law.

Of the three required elements under *Zullo*, the third is whether the officer either knew or should have known that the officer was violating clearly established law, or the officer acted in bad faith. The only fact set forth in the City’s Statement of Undisputed Facts that pertains to this third element is a statement that “Plaintiff knows of no clearly established law in existence at the time of the 2016 incidents that was violated by Newport police officers.” Reference is made to an answer Mr. Cornelius gave to a question put to him at a deposition. However, the issue is not whether Mr. Cornelius knew at some point in the past whether there was or was not established law, but whether or not the *officer(s)* knew or should have known that they were violating clearly established law, or, whether they were acting in bad faith. This element calls for a combination of legal and factual determinations: what the established law was pertaining to the basis on which Mr. Cornelius was arrested and incarcerated; whether the officers knew what the law was; whether they should have known what the law was, or whether they acted in bad faith. There is an insufficient factual basis on this element in the undisputed facts set forth by the City.

Because there not sufficient facts to support judgment on this element, there are insufficient facts to support judgment for the City on the claim as a whole, and it is unnecessary to analyze whether undisputed facts support the other two elements.


For the foregoing reasons, the Motion for Summary Judgment is denied. This is not a summary judgment ruling in favor of Petitioner Cornelius. It is simply a denial of summary judgment to the City because there are insufficient facts to support the ruling of law the City seeks.

**Order**

The Motion for Summary Judgment (Motion #2) is *denied*.

The Pretrial Order of March 25, 2021 is amended to extend the date for completing mediation to March 1, 2022.

Electronically signed pursuant to V.R.E.F. 9(d) on January 3, 2022 at 7:39 AM.

  
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Mary Miles Teachout  
Superior Court Judge