



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

June 23, 2011

Robert E. Jones, General Counsel
Office of Legal Services
Georgia Department of Corrections
P.O. Box 1529
Forsyth, Georgia 31029

Re: Notice of Findings
v. Georgia Department of Corrections (11-OCR-0203)

Dear Mr. Jones:

Thank you for the documentation that you submitted to the Office for Civil Rights (OCR), Office of Justice Programs, U.S. Department of Justice (DOJ) on behalf of your client, the Georgia Department of Corrections (DOC), in connection with the administrative Complaint that (Complainant) has filed against the DOC. In his Complaint, the Complainant alleges that a probation officer with the DOC discriminated against him based on race (African American) and age (twenty-one years old) during a May 5, 2010, meeting.

The OCR has completed our review of the documentation provided by both the DOC and the Complainant and has determined that there is insufficient evidence of a violation of the civil rights laws that we enforce. Our findings are set forth below for your review.

Factual Background

The Complainant alleges the following:

On May 5, 2010, the Complainant reported to his probation officer, (Caucasian), at the Valdosta Probation Office in Lowndes County, Georgia. While speaking with the Complainant, Officer asked the Complainant if the Complainant had a job, and when the Complainant said that he did, Officer said that he did not believe the Complainant and that he “was tired of [the Complainant’s] bullshit.” Officer further told the Complainant that he didn’t really “give a damn” if the Complainant’s “skinny black ass” is locked up because it makes his job a lot easier. Officer instructed the Complainant to get down on his knees and beg or else he was going to send the Complainant to jail. Fearing that Officer was going to send him to jail, the Complainant got down on his knees and began to beg not to go to

jail, and Officer [redacted] told the Complainant to beg harder to show him that the Complainant really wanted to stay out of jail. Officer [redacted] asked the Complainant, "[w]ho is your daddy," and when the Complainant replied with the name of his father, Officer [redacted] said "[n]o, I am your daddy." Officer [redacted] called the Complainant's employer, [redacted] to verify that the Complainant was employed, and when Mr. [redacted] verified that the Complainant was employed, Officer [redacted] said that he did not believe that and began rudely questioning Mr. [redacted]. The interaction between the Complainant and Officer [redacted] occurred inside Officer [redacted] office with the door open, and there were a number of people, including DOC probation officers, in the lobby directly outside of Officer [redacted] office who could hear their conversation. Officer [redacted] also made the Complainant submit to a urine test and cursed at the Complainant while the Complainant was undergoing the test.

The Complainant submitted a written statement to the OCR from a probationer who was at the Valdosta Probation Office on May 5 at the same the Complainant was meeting with Officer [redacted]. In this written statement, the probationer states that he heard Officer [redacted] tell the Complainant to get on his knees and heard Officer [redacted] curse at the Complainant and state that "I do not care about your skinny black ass." The OCR contacted the probationer to discuss this statement; however, the probationer did not return the OCR's phone call.

In his written Complaint to the OCR, the Complainant asserted that Officer [redacted] conduct is due to discrimination based on the Complainant's race and age. However, when speaking with the OCR, the Complainant said that he doesn't know if Officer [redacted] conduct was based on his race and age, and that Officer [redacted] probably just had a rough day. The Complainant and his father also filed a complaint with the DOC regarding Officer [redacted] treatment of the Complainant. The DOC's Office of Internal Compliance (OIC) conducted an investigation into the complaint, and found that there was insufficient evidence of misconduct in violation of the DOC's policies entitled "Unlawful Harassment" and "Employee Standards of Conduct" (*see* Pages 3-4 of this Notice of Findings for a discussion of these policies).

In the DOC's Position Statement regarding the Complaint filed with the OCR, the DOC disputed the Complainant's allegations. The DOC said that during Officer [redacted] meeting with the Complainant, Officer [redacted] told the Complainant that he was disappointed with the Complainant because the Complainant was not complying with the terms of his probation, and he questioned the Complainant regarding the Complainant providing an incorrect address and failing to obey his probation curfew. The DOC stated that Officer [redacted] told the Complainant that "I am damn well tired about you not being home when we come to your house," and advised the Complainant that he was thinking of obtaining an arrest warrant due to the Complainant's non-compliance. According to the DOC, upon hearing this, the Complainant dropped to one knee, folded his hands prayer-style, and begged Officer [redacted] not to obtain an arrest warrant. The DOC further stated that consistent with the terms of the Complainant's probation, Officer [redacted] then required the Complainant to submit to a drug screening test, and while they

were walking to the drug screening counter the Complainant continued to beg Officer to give him another chance.

The DOC provided the OCR with documentation related to the OIC's investigation into the Complainant's allegations, including audio recordings and written summaries of the OIC's interviews of the Complainant, Officer and four employees of the Valdosta Probation Office who were within hearing distance of Officer May 5 meeting with the Complainant. The testimony of Officer and the other DOC employees is consistent with the information contained in the DOC's Position Statement. Officer admitted to stating that he is "damn well tired" about the Complainant not being home when probation officers visit his house, and admitted to telling the Complainant that, "I think you are blowing smoke up my ass" when the Complainant told him that the Complainant was employed. Officer said that he made the second statement to the Complainant because the Complainant's employer was very evasive when Officer attempted to question him over the telephone regarding the Complainant's employment, and he denied directly cursing at the Complainant. Officer also denied using the words "skinny black ass" or making any other racial comments or slurs, or engaging in any belittling behavior. According to Officer testimony, once Officer told the Complainant that he was contemplating obtaining an arrest warrant due to the Complainant's failure to obey the rules of his probation, the Complainant initiated the action of getting down on his knees and begging Officer not to send him to jail. Officer testified that he did not instruct or coerce the Complainant to beg.

During the OIC's interviews of three probation officers and one receptionist who were within hearing distance of Officer meeting with the Complainant, none of the employees reported hearing Officer yell or curse at the Complainant or use racial slurs, and none reported hearing Officer instruct the Complainant to get on his knees and beg. Three of the four employees said that they have heard Officer curse in the office but have never heard him use racial slurs or attempt to belittle a probationer.

Policies and Procedures Relevant to the Allegations

The DOC provided the OCR with several internal policies and procedures relevant to the Complainant's allegations. The DOC provided the OCR with Standing Operating Procedure (SOP) reference number IV013-0003, "Unlawful Harassment," which states that it is the policy of the DOC to provide all individuals conducting business with the DOC with an environment free of unlawful harassment. The procedure defines unlawful harassment as "[v]erbal or physical contact that disparages or shows hostility or aversion toward an individual because of that person's race, color, religion, gender, national origin, age, or disability." The procedure contains examples of unlawfully harassing behavior, including slurs or threatening, intimidating, or hostile acts that relate to any of the above-referenced classes. The DOC also provided the OCR with SOP reference number IV014-0001, "Employee Standards of Conduct," which states that employees

shall not use profanity or abusive language against an offender. The procedure further states that employees shall treat all citizens equally in a professional and fair manner without regard to race, gender, creed, color, national origin, religion, age, disability, political affiliation, sophistication, or affluence.

Legal Analysis

Title VI of the Civil Rights Act of 1964 (Title VI) provides that “[n]o person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d. Additionally, the Omnibus Crime Control and Safe Streets Act of 1968 (Safe Streets Act), under which the DOC receives DOJ funding, contains a discrimination provision modeled after Title VI that prohibits funding recipients from discriminating on the basis of race, color, national origin, sex, and religion. 42 U.S.C. § 3789d(c)(1). In accordance with the Age Discrimination Act of 1975, agencies receiving Federal financial assistance are prohibited from discriminating on the basis of age in the delivery of services. 42 U.S.C. § 6102. To prove discrimination under these statutory provisions, the evidence must establish an intent to discriminate. Village of Arlington Heights v. Metropolitan Housing Development Corporation, 429 U.S. 252, 265 (1977); Burton v. City of Belle Glade, 178 F.3d 1175, 1202 (11th Cir. 1999). Discriminatory intent may be shown by such factors as substantial disparate impact, a history of discriminatory actions, procedural and substantive departures from the norms generally followed by the decisionmaker, and discriminatory statements. Village of Arlington Heights, 429 U.S. at 265; Elston v. Talladega County Board of Education, 997 F.2d 1394, 1406 (11th Cir. 1993).

The OCR has carefully reviewed the documentation that has been submitted by both the Complainant and the DOC, and finds that the evidence is insufficient to demonstrate that Officer _____ discriminated against the Complainant based on race or age. Based on the information that is before us, it appears that Officer _____ actions are consistent with the DOC’s norms or procedures. The Complainant alleges that Officer _____ used profanity, used the phrase “skinny black ass” in reference to the Complainant, and engaged in disparaging behavior such as requiring the Complainant to beg to stay out of jail and to call Officer _____ his “daddy.” However, Officer _____ denies using any racial terms or slurs or requiring the Complainant to beg, and while he admits to using several profanities while speaking with the Complainant, he states that he was not cursing at the Complainant. While the Complainant provided the OCR with a written statement from a fellow probationer stating that the probationer heard Officer _____ instruct the Complainant to get down on his knees and heard him use a racial term, the witness did not return the OCR’s phone call to discuss these allegations, and DOC employees testified that they did not hear Officer _____ make these statements. As for the Complainant’s allegation to the OCR that Officer _____ required him to call Officer _____ his “daddy,” it is important to note that the Complainant did not raise this allegation during his interview with the OIC investigator. When the OIC investigator

Robert E. Jones, General Counsel

June 23, 2011

Page 5

interviewed Officer [redacted] Officer [redacted] generally denied engaging in any belittling conduct toward the Complainant.

While the OCR does have concerns with Officer [redacted] use of profanity while speaking with a probationer, whether or not the profanity was used against the Complainant, the OCR finds that the evidence is insufficient to demonstrate that Officer [redacted] conduct on May 5 departed from any established norms or procedures, or that Officer [redacted] made discriminatory statements.¹

In the DOC's Position Statement, the DOC states that Officer [redacted] has worked for the DOC for thirty years, and there have been no complaints of discrimination against him during this time. Therefore, it does not appear that Officer [redacted] has a history of discrimination.

Based on all of the information discussed above, the OCR finds that there is insufficient evidence to demonstrate that Officer [redacted] acted with an intent to discriminate against the Complainant in violation of Title VI, the Safe Streets Act, or the Age Discrimination Act. Moreover, the Complainant himself told the OCR that he is unsure whether Officer [redacted] conduct was based on his race and age. Therefore, we are closing the administrative Complaint filed by the Complainant.

Sincerely,

/s/

Michael L. Alston

Director

¹ Please be advised that a DOC employee's use of profanity while speaking with an offender or probationer, even if the profanity is not directed at or used against the offender or probationer, may lead to a perception of disparaging or harassing conduct. Therefore, the OCR recommends that the DOC advise employees against using any profanity when speaking with offenders, probationers, or other individuals with whom DOC employees come into contact with.