

VANN L. BAILEY, BE-5699,

Plaintiff,

v.

SYLVIA GIBSON, STEPHEN RYBA,
MELISS HAINSWORTH, GERALD
ROZUM,

Defendants.

IN THE COURT OF COMMON
PLEAS OF SOMERSET COUNTY,
PENNSYLVANIA

NO. 234 CIVIL 2012

Certified to be true and
correct copy of the original
Document on file in
this office.

Prothonotary

MEMORANDUM

ARBIT SVONAVEC
PROTHONOTARY
SOMERSET PA

2012 MAR 29 PM 3:30

FILED FOR RECORD

On March 26, 2012, Plaintiff Vann Lamont Bailey, an inmate at the State Correctional Institution [SCI] at Somerset, submitted a request to proceed in forma pauperis in a civil action against the Defendants, including Sylvia Gibson [D.S.C.S and P.R.C. Member], Stephen Ryba [RHU Lieutenant], Melissa Hainsworth [Member of P.R.C.], and Gerald Rozum [SCI - Superintendent]. For the reasons stated below, Plaintiff's request is denied.

Pursuant to Pa.R.Civ.P. 240(b), a person "who is without financial resources to pay the costs of litigation is entitled to proceed in forma pauperis." This general rule, however, is subject to certain limitations and exceptions. Among those limitations is subpart (j) which provides:

If, simultaneous with the commencement of an action or proceeding or the taking of an appeal, a party has filed a petition for leave to proceed in forma pauperis, the court prior to acting upon the petition may dismiss the action, proceeding or appeal if the allegation of poverty is untrue or if it is satisfied that the action, proceeding or appeal is frivolous.

Note: A frivolous action or proceeding has been defined as one that "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1990).

Pa.R.Civ.P. 240(j) (emphasis added); see also Pa.R.Civ.P. 240, note 4 (frivolous actions). Simply, Rule 240 allows us to dismiss the case if we find the action to be frivolous. Notably, we may only dismiss an action under this Rule if we have not yet granted the plaintiff in forma pauperis status. In other words, once we grant the plaintiff in forma pauperis status, we are not permitted to dismiss his or her action under the Rule 240 test of frivolity. *Grosso v. Love*, 667 A.2d 43, 44 (Pa. Commw. 1995). Therefore, we take this opportunity to review the merits of Plaintiff's Complaint now, before granting him in forma pauperis status.

In addition, the Prison Litigation Reform Act, 42 Pa.C.S.A. §6601 *et seq.*, provides that the court *shall* dismiss prison conditions litigation *at any time* if the court determines that the litigation is frivolous, malicious, or fails to state a claim upon which relief may be granted, or the defendant is entitled to assert a valid affirmative defense. 42 Pa.C.S.A. §6602(e)(2) [Emphasis Added]

Plaintiff asserts that he has diligently requested of the SCI Somerset staff that he be credited for seven days of RHU time that was "owed" to him. He had principally been sanctioned to 90 days in the RHU but believes that seven days credit should have been afforded to him for the time spent during the investigation. It appears that he was charged with possession of contraband which was sufficiently severe that the Program Review Committee denied him the credit.

Plaintiff argues that his rights under the 4th and 14th amendments have been violated together with his liberty rights. He is requesting monetary compensation in the amount of \$2000 for every day that he was placed in the Restricted Housing Unit for which he did not receive

credit. He is similarly requesting punitive damages in the amount of \$2000 for each day of placement in the RHU for which he did not receive credit.

Procedural due process rights are triggered by deprivation of a legally cognizable liberty interest. For a prisoner, such a deprivation occurs when the prison “imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.” Sandin v. Conner, 515 U.S. 472, 484, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995). Lesser restraints on a prisoner’s freedom are deemed to fall “within the expected perimeters of the sentence imposed by a court of law.” *Id.* If a prisoner had no protected liberty interest in remaining free of disciplinary custody, then the state owes him no process before placing him in disciplinary confinement. In *Sandin*, the Supreme Court held that 30 days of disciplinary segregation for resisting a strip search did not implicate a liberty interest because “disciplinary segregation, with insignificant exceptions, mirrored those conditions imposed upon inmates in administrative segregation and protective custody” in that “conditions at [the prison] involve[d] significant amounts of ‘lockdown time’ even for inmates in the general population.” Sandin, 515 U.S. at 486, 115 S.Ct. 2293.

Accordingly, plaintiff cannot identify a legally cognizable liberty interest in the instant case for which she is entitled to relief in the form of monetary damages. Further, we are reluctant to intercede as trial courts in the ongoing authority granted to the correctional facilities to manage the terms of confinement of the inmates placed in their care without evidence of clear constitutional violations.

Having found that Plaintiff has failed to set forth any arguable basis for a cause of action, we simultaneously dismiss his complaint and deny his request to proceed in forma pauperis

