

LAMAR BROWN, FR-2835,

Plaintiff,

v.

TRACEY ZIMMERMAN; KASTERKO;  
BLAKE; HAINZER; FELESKY;  
PRITTS; HUBER; HAINWORTH;  
GERALD ROZUM; BARRY GRUBB;  
STEPHEN RYBA; VALKO; FOGLE;  
DORINA VARNER, Office of Special  
Investigation and Intelligence; MELANIE  
PYLE; ROBIN M. LEWIS; BOYD; NEW;  
MOSIAKI; FRAZIER,

Defendants.

) IN THE COURT OF COMMON  
) PLEAS OF SOMERSET COUNTY,  
) PENNSYLVANIA  
)  
)  
)

NO. 124 CIVIL 2015

IFP DENIAL ORDER

MEMORANDUM

On March 5, 2014, Plaintiff, Lamar Brown, #FR-2835, currently an inmate at the State Correctional Institution [SCI] at Rockview, but formerly at SCI Somerset, submitted a request to proceed *in forma pauperis* in a civil action against the Defendants, including the SCI Somerset Superintendent, Office of Special Investigations and Intelligence, as well as numerous corrections officers. 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

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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] One such affirmative defense is that the Plaintiff has failed to exhaust his administrative remedies. *St. Clair v. Board of Probation and Parole*, 493 A.2d 146 (Pa. Cmwlth. 1985). The primary purpose of the exhaustion doctrine is to ensure that claims will be heard, as a preliminary matter, by the body having expertise in the area. *Id. at 152*. In addition, the exhaustion doctrine provides the

agency with the opportunity to correct its own mistakes and to moot judicial controversies. *Parisi v. Davidson*, 405 U.S. 34 (1972).

After reviewing the entire twenty-six-page Complaint in the present case, we find the pleading fails to assert any arguable cause of action. Plaintiff asserts that he was mistreated on August 30, 2012 when he was apprehended by Corrections Officers Kasterko, Felesky, Hainzer, and Blake who were proceeding to remove him from his general population cell area to be taken to the Restricted Housing Unit. Corrections Officer Zimmerman had reported that Plaintiff had recently threatened her and Plaintiff was to be placed in Administrative Custody pending an investigation. Plaintiff claims that the officers handled him roughly such that he needed medical attention when he got to the RHU. The apparent injuries were a result of his handcuffs being too tight as well as the allegation of being forced to the ground due to his failure to cooperate with the officers. He was promptly seen by medical staff personnel and was given Motrin for his reported pain. On a later occasion he claims that during his "yard time" from the RHU cell his handcuffs were not removed in a timely fashion, thereby causing him additional pain. Plaintiff filed numerous grievances with appeals thereto as well as appeals of the disciplinary charges filed against him for threatening Officer Zimmerman. All of the grievances and appeals were carefully reviewed, reports were written, and investigations were made. He alleges constitutional claims of retaliation and cruel and unusual punishment as well as state tort claims for fraud and negligence.

Without expending substantial dictum in arriving at our conclusion in this matter, we simply state that Plaintiff has failed to allege injuries which would amount to cruel and unusual punishment as a matter of law. His retaliation claims do not regard

retaliation for matters which were constitutional rights, i.e. He did not have a constitutional right to disobey the orders of the corrections officers who were directing him to cooperate for his removal into administrative custody. His state tort claims are barred by the statute of limitations and/or sovereign immunity. It is not the role of the court system to second-guess the Department of Corrections personnel in their rendering of control over inmates unless and until valid claims of violation of constitutional rights are alleged.

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

