

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

PETER COOK, :
Plaintiff :
 :
vs. : CIVIL ACTION NO. 1:CV-95-1332
 : (Judge Caldwell
 : (Magistrate Judge Blewitt)
KENNETH KYLER, et al., :
Defendants :

O R D E R

FILED
MAR 20 1996
DEPT. OF COURTS
HARRISBURG, PA. DEPUTY CLERK

AND NOW, this 20th day of March, 1996, upon consideration of the report of the magistrate judge, dated February 28, 1996, and the objections thereto, and upon independent review of the record, it is ordered that the magistrate judge's report is adopted. It is further ordered, pursuant to the magistrate judge's recommendations, that:

1. The defendants' motion to dismiss is granted.
2. The Clerk of Court shall close this file.

It is certified that any appeal from this order is frivolous, is not taken in good faith, and is lacking in probable cause.

William W. Caldwell
William W. Caldwell
United States District Judge

Certified Correct
Date 3/20/96
Mag. L. D'Andrea, Clerk
Per *George J. Anderson*
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

* * MAILING CERTIFICATE OF CLERK * *

Re: 1:95-cv-01332 Cook v. Kyler

True and correct copies of the attached were mailed by the clerk
to the following:

Peter Cook
SCI-CH
BI-9152
P.O. Box 200
Camp Hill, PA 17001-0200

Linda Cadden Barrett, Esq.
Office of Attorney General
15th Floor
Strawberry Square
Harrisburg, PA 17120

cc:
Judge ()
Magistrate Judge ()
U.S. Marshal ()
Probation ()
U.S. Attorney ()
Atty. for Deft. ()
Defendant ()
Warden ()
Bureau of Prisons ()
Ct Reporter ()
Ctroom Deputy ()
Orig-Security ()
Federal Public Defender ()
Summons Issued () with N/C attached to complt. and served by:
U.S. Marshal () Pltf's Attorney ()
Standard Order 93-5 ()
Order to Show Cause () with Petition attached & mailed certified mail
to: US Atty Gen () PA Atty Gen ()
DA of County () Respondents ()
Bankruptcy Court ()
Other _____ ()

MARY E. D'ANDREA, Clerk

DATE: 3/20/96

BY: 

Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

PETER COOK, : CIVIL ACTION NO. 1:CV-95-1332

Plaintiff : (Judge Caldwell)

v. : (Magistrate Judge Blewitt)

KENNETH KYLER, et al.,

Defendants

FILED
SCRANTON

FEB 28 1996

PER

DEPUTY CLERK

REPORT AND RECOMMENDATION

The Plaintiff, an inmate at the State Correctional Institution at Camp Hill ("SCI-Camp Hill"), filed this civil rights action on August 11, 1995, pursuant to 42 U.S.C. §1983, alleging that his due process rights were violated in the context of five separate disciplinary proceedings. (Doc. 1). On October 25, 1995, the Plaintiff filed a motion to amend the complaint, seeking permission to amend the *ad damnum* clause of his complaint to include compensatory and punitive damages. (Doc. 8). By order dated October 31, 1995, the motion was granted.¹

Named as Defendants are the following individuals: Kenneth Kyler, Superintendent; Lamar L. Liphart, Hearing Examiner; Mr. Zwierzyna, Deputy Superintendent; James Welby, Hearing Examiner; and Martin F. Horn, Commissioner.

1. Attached to the original complaint is a document that the Plaintiff entitles "Petition for Writ of Habeas Corpus." Upon review of said document, it is clear that the averments contained therein are facts in further support of the Plaintiff's complaint. The document will therefore be construed as such, especially in light of the Plaintiff's desire to obtain compensatory and punitive damages for the actions of the Defendants.

I. Pending Motions.

On October 23, 1995, the Defendants filed a Motion to Dismiss the Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. (Doc. 6). A brief in support of the motion was filed on November 6, 1995. (Doc. 13). On November 3, 1995, the Plaintiff filed an "Affidavit and Exhibits." (Doc. 12). Thereafter, on November 24, 1995, the Plaintiff filed a brief in opposition to the motion. (Doc. 18). The Defendants filed a reply brief and documents in support thereof on December 4, 1995. (Doc. 22 and 23). The Defendants' motion to dismiss the complaint is ripe for disposition.²

II. Motion to Dismiss.

1. Standard.

When evaluating a motion to dismiss, the court must accept all material allegations of the complaint as true and construe all inferences in the light most favorable to the plaintiff. *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974). A complaint should not be dismissed for failure to state a claim unless it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 44-46 (1957); *Ransom v. Marrazzo*, 848 F.2d 398, 401 (3d Cir. 1988). A complaint that sets out facts which affirmatively demonstrate that the plaintiff has no right to recover is properly dismissed without leave to amend. *Estelle v. Gamble*, 429 U.S. 97, 107-108 (1976).

2. Matters outside the pleadings have been submitted by the Plaintiff for the Court's review. (Doc. 12). When matters outside the pleadings are considered by the court, a motion to dismiss the complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure is properly converted to a motion for summary judgment pursuant to Federal Rules of Civil Procedure, Rule 56. However, we find that the action can properly be disposed of without consulting the information provided by the Plaintiff (Doc. 12) and, therefore, we will not convert the motion to a Rule 56 motion.

2. *Analysis.*

The Plaintiff alleges that over the span of one year, he received five different misconducts for assault and that, following five separate hearings, he was found guilty on each of the misconducts. The totality of the sanctions imposed equaled two hundred and seventy (270) days in disciplinary custody. (Doc. 1, p. 5).

The Plaintiff charges that at each of the hearings, the presiding hearing examiner, whether it be Defendant Welby or Defendant Liphart, directly violated administrative directives governing disciplinary proceedings when they adjudged him guilty without sufficient evidence. He alleges that this conduct resulted in a denial of his due process rights.

A. Supervisory Defendants.

The Plaintiff names the following supervisory officials as Defendants: Martin F. Horn, Commissioner of Corrections; Kenneth Kyler, Superintendent at SCI-Camp Hill; and Mr. Zwierzyna, Acting Superintendent at SCI-Camp Hill. However, the Plaintiff fails to advance any allegations against these Defendants which would indicate that they were personally involved in conduct amounting to a constitutional violation.

In an action brought pursuant to 42 U.S.C. §1983, in order to state a claim, the Plaintiff must prove that the complained of conduct was committed by a person acting under color of state law and that said conduct deprived the plaintiff of rights, privileges or immunities secured by the laws or the Constitution of the United States. *Parratt v. Taylor*, 451 U.S. 527 (1981). Liability may only be based upon a Defendant's personal involvement in conduct amounting to a constitutional violation and cannot be premised on the doctrine of

respondeat superior. *Hampton v. Holmesburg Prison Officials*, 546 F.2d 1077 (3d Cir. 1976); *Rizzo v. Goode*, 423 U.S. 362 (1976).

The Plaintiff has failed to allege that the named supervisory defendants engaged in conduct that deprived the Plaintiff of a constitutional right. As such, the complaint fails to state a cause of action against these Defendants.

B. Hearing Examiners

The Plaintiff seeks to hold Hearing Examiner Liphart and Hearing Examiner Welby liable on the basis that their conclusions of guilt following his misconduct hearings violated his due process rights, thereby depriving him of a liberty interest.

The Supreme Court has recently imposed extreme limitations on the due process rights that arise from the Fourteenth Amendment. The inquiry for determining when an inmate has a liberty interest is whether the added restraint "imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Sandin v. Conner*, __ U.S. __, 115 S. Ct. 2293, 2301 (1995). "Discipline by prison officials in response to a wide range of misconduct falls within the expected parameters of the sentence imposed by a court of law." *Id.* There is no entitlement to due process in this context. *Id.* As such, "...any § 1983 complaint which seeks to challenge the adequacy of process in these circumstances, accordingly presents no viable constitutional claim." *Brightwell v. Wiland*, Civil No. 1:CV-95-0670 (M.D. Pa.) (Order October, 13, 1995) *citing*, *Grosso v. Love, et al.*, Civil No. 1:CV-94-0284 (M.D. Pa.) (Mem. and Order, July 18, 1995); *Brown v. Chesney, et al.*, Civil No. 93-0284 (E.D. Pa.) (Order, August 7, 1995); *Brown v. Stachelek, et al.*, Civil No. 95-0522 (E.D. Pa.) (Mem. and Order, July 20, 1995).

We do not find that the Plaintiff has alleged any facts that would give rise to a due process claim under the *Sandin* decision. The imposition of a sanction of 270 days in disciplinary custody for five separate misconducts received by the Plaintiff over the course of one year does not present "the type of atypical, significant deprivation in which a state might conceivably create a liberty interest." *Sandin*, 115 S.Ct. at 2301. As such, the Plaintiff fails to state a claim and the complaint is subject to dismissal.

III. Recommendation.

Based on the foregoing, it is respectfully recommended that the Defendants' motion to dismiss the complaint (**Doc. 6**) be granted.



THOMAS M. BLEWITT
United States Magistrate Judge

Dated: February 28, 1996

UNITED STATES DISTRICT COURT
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: :
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NOTICE

NOTICE IS HEREBY GIVEN that the undersigned has entered the foregoing
Report and Recommendation dated **February 28, 1996**.

Any party may obtain a review of the Report and Recommendation pursuant to
Rule 72.31 which provides:

Any party may object to a magistrate's proposed findings, recommendations or report under subsections 72.4, 72.5, and 72.6 of these rules, *supra*, **within ten (10) days** after being served with a copy thereof. Such party shall file with the Clerk of Court, and serve on the magistrate and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Rule 72.30 shall apply. A judge shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate. The judge, however, need conduct a *pew* hearing only in his discretion or where required by law, and may consider the record developed before the magistrate, making his own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate with instructions.



THOMAS M. BLEWITT
United States Magistrate Judge

Dated: February 28, 1996