

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

BARRY CORLEY,	:	No.3:02cv798
Plaintiff	:	
	:	(Judge Munley)
v.	:	
	:	
CORRECTIONAL OFFICERS	:	
PELTER and SCHULTZ,	:	
Defendants	:	

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MEMORANDUM

Before the Court for disposition are Plaintiff Barry Corley’s objections to Magistrate Judge Thomas M. Blewitt’s report and recommendation, which proposes the dismissal of Corley’s complaint. For the reasons that follow, we will adopt Magistrate Judge Blewitt’s recommendation and thereby dismiss Corley’s complaint pursuant to Federal Rule of Civil Procedure 12(b)(6).

I. Background

On March 2, 2002, at 11:45 a.m., Corley was in the Residential Housing Unit (“RHU”) at SCI-Camp Hill when toilet paper that he had placed in his cell’s door frame to keep the cold out caught fire. Corley alleges that the defendants set fire to the toilet paper. He claims that he saw defendants running away from his cell immediately after the fire. Defendant Schultz later returned to remove the burnt debris from the door frame to Corley’s cell. Later that day, around 4:30 p.m., the prison fire alarm system went off, nearly five hours after the fire in Corley’s cell. These incidents were investigated by prison officials,

and they determined that Corley set the 11:45 a.m. fire and that there was no fire at 4:30 p.m. After a hearing, Corley received 180 days of disciplinary custody.

In response to the decision of prison officials to impose 180 days of disciplinary custody, Corley filed two grievances through the prison grievance system. Corley's first grievance, number 16967 of March 19, 2002, was submitted pursuant to DC-ADM-804 to Facility Grievance Coordinator Ian Taggert, ("FGC Taggert"). The grievance stated that the Prison Program Review Committee ("PRC") improperly dismissed his appeal of the prison's imposition of disciplinary custody for setting the cell fire. FGC Taggert rejected Corley's grievance because it was improperly filed pursuant to DC-ADM-804. FGC Taggert informed Corley that grievances concerning inmate discipline must be filed pursuant to DC-ADM-801. Corley filed a second grievance concerning the 180 day disciplinary custody pursuant to DC-ADM-804, and it was again rejected.

Next, Corley filed the instant action, seeking relief pursuant to 42 U.S.C. § 1983 for alleged violations of his federal rights. In his complaint, Corley requests that this Court impose criminal charges of arson and conspiracy upon the defendants, vacate a written misconduct he received for starting the fire, and award compensation for physical pain and suffering resulting from the fire. The case was first referred to Magistrate Judge Blewitt, who in his report recommends the dismissal of Corley's complaint pursuant to Rule 12(b)(6). Magistrate Judge Blewitt held: (1) the Court has no authority to file state criminal charges against the defendants; (2) that Corley failed to allege that he was deprived of a

protected liberty through the imposition of disciplinary custody; and (3) that Corley did not demonstrate a physical injury and thus could not sustain a claim for psychological pain and suffering under Third Circuit precedent.

Corley now objects to Magistrate Judge Blewitt's recommendation. He makes the following four objections:¹ First, Corley argues that the magistrate erred in his determination that the Court could not impose state criminal charges upon the defendants. Second, he contends that Defendants Pelter and Schultz violated his procedural due process rights. Third, he objects to the magistrate's finding that he has failed to state a claim for compensation for alleged psychological damages. Fourth, Corley argues that the magistrate wrongly concluded that he has not stated a claim for deprivation of a protected liberty interest in violation of the Fourteenth Amendment's Substantive Due Process Clause. Corley's objections have been fully briefed and are ripe for disposition.

II. Jurisdiction

We exercise jurisdiction over this petition pursuant to 28 U.S.C. § 1331.

III. Standard of Review

In disposing of objections to a magistrate's report and recommendation, we make a *de novo* determination of those portions of the report to which objections are made. 28 U.S.C. § 636 (b)(1)(C); see also Henderson v. Carlson, 812 F.2d 874, 877 (3d Cir. 1987). We may

¹ Corley lists a number of other objections to Magistrate Judge Blewitt's report and recommendation. These objections, however, are repetitive of the four discussed above and we will not consider them separately.

accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate. We may also receive further evidence or recommit the matter to the magistrate with instructions. Id.

When considering a 12(b)(6) motion, as in this case, the sufficiency of a complaint's allegations are tested. Kost v. Kozakiewicz, 1 F.3d 176, 183 (3d Cir. 1993). The issue is whether the facts alleged in the complaint, if true, support a claim upon which relief can be granted. Morse v. Lower Merion School District, 132 F.3d 902, 906 (3d Cir. 1997). In deciding a 12(b)(6) motion, the Court must accept as true all factual allegations in the complaint and give the pleader the benefit of "all reasonable inferences that can fairly be drawn therefrom, and view them in the light most favorable to the plaintiff." Id. "A 12(b)(6) motion should be granted 'if it appears to a certainty that no relief could be granted under any set of facts which could be proved.'" Id. (quoting D.P. Enter. Inc. v. Bucks County Cmty. Coll., 725 F.2d 943, 944 (3d Cir. 1984)).

IV. Discussion

A. Request for the Filing of Criminal Charges

The magistrate denied Corley's request that the Court file state criminal charges against the defendants pursuant to 42 U.S.C. § 1983. Corley's objections to the magistrate's ruling are without merit. This Court has no power to file state criminal charges against the defendants pursuant to 42 U.S.C. § 1983 or any other statute. Accordingly, Corley's objection with regard to the filing of state criminal charges against the defendants will be

denied because he fails to state a claim for which relief can be granted.

B. Procedural Due Process

From his objections, it appears that Corley claims that the defendants violated his procedural due process rights when his appeal of his disciplinary custody was denied because of his failure to attend one or more hearings on the matter. The objection is without merit. As defendants note, in order for a person to be held liable under 42 U.S.C. § 1983, there must be an allegation that the person was involved in the deprivation of a constitutional or federal right. Rizzo v. Goode, 423 U.S. 362, 371-77 (1976). Personal involvement may be established through allegations of actual participation, direction, or acquiescence in a proscribed act. Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988). There is nothing in Corley's complaint to suggest that the defendants had any part in the dismissal of his first or second prison grievance appeals. Thus, they cannot be held liable under section 1983 for any alleged violation of Corley's due process rights stemming from those dismissals. Accordingly, Corley's objection with regard to the violation of his due process rights will be denied because he fails to state a claim for which relief can be granted.

C. Compensation for Alleged Psychological Damages

Corley objects to the magistrate's finding that he has failed to state a claim for compensation for alleged psychological damages. The objection is without merit. Section 1997e(e) of Title 42 states: "No Federal civil action may be brought by a prisoner confined

in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury.” Corley has alleged no physical injury in his complaint or later filings with this Court. Accordingly, we will deny his objection with regard to compensation for psychological damages.

D. Substantive Due Process

Corley argues that the magistrate wrongly concluded that he has not stated a claim for deprivation of a protected liberty interest in violation of the Fourteenth Amendment. He alleges that his placement in protective custody violated his right to substantive due process. Corley is mistaken. He has alleged no facts to suggest that the disciplinary custody imposed upon him exceeded the scope of his sentence, and disciplinary custody in itself does not violate notions of due process. Torres v. Fauver, 292 F.3d 141, 150 (3d Cir. 2002). Accordingly, we will deny Corley’s objection on his due process claim.

E. Motion to Amend Complaint

Corley has also filed a motion to amend his complaint with the proposed amendments. We treat Corley’s motion as granted and have thoroughly reviewed his amendments. Nonetheless, there is nothing in Corley’s amended complaint that alters our de novo review. His complaint, as amended, still fails to state a claim for which relief can be granted.

V. Conclusion

For the above stated reasons, we will adopt Magistrate Judge Blewitt’s report and

recommendation and dismiss Corley's complaint against the defendants. We will also deny plaintiff's motion to compel discovery and defendants' motion for a protective order as moot. An appropriate order follows.

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FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BARRY CORLEY,
Plaintiff

v.

CORRECTIONAL OFFICERS
PELTER and SCHULTZ,
Defendants

: No.3:02cv798
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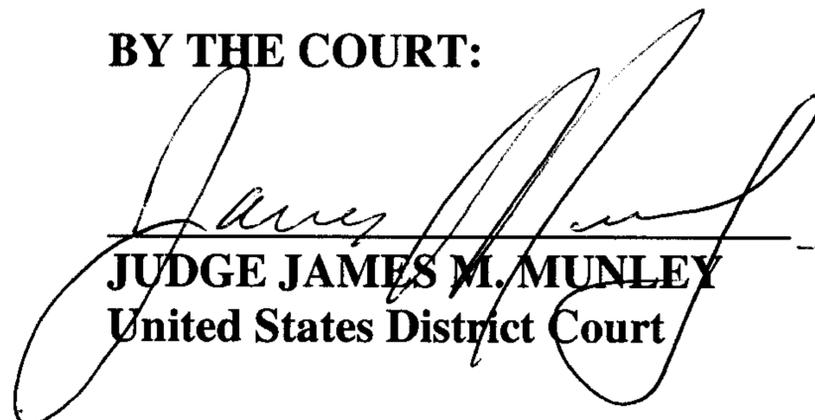
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ORDER

AND NOW, to wit, this 24TH day of June 2003, it is hereby **ORDERED** that:

1. Plaintiff's motion to amend his complaint (Doc. 52) is **GRANTED** and the accompanying amendments have been accepted and considered by the Court.
2. Plaintiff's objections (Docs. 51 and 53) to the magistrate's report and recommendation are **DENIED**.
3. The magistrate's report and recommendation (Doc. 45) is **ADOPTED**.
4. Plaintiff's motion to compel discovery (Doc. 48) is **DENIED** as moot.
5. Defendants' motion for a protective order (Doc. 49) is **DENIED** as moot.
6. The Clerk of Court is directed to close this case.

BY THE COURT:



JUDGE JAMES M. MUNLEY
United States District Court