

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

8
2/14/03

BARRY CORLEY,
Plaintiff

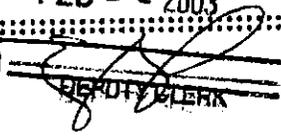
: No.3:02cv2324
:
: (Judge Munley)

v.

GRIEVANCE COORDINATOR
BARNETT, et al.,
Defendants

FILED
SCRANTON

FEB 14 2003

PER 
DEPUTY CLERK

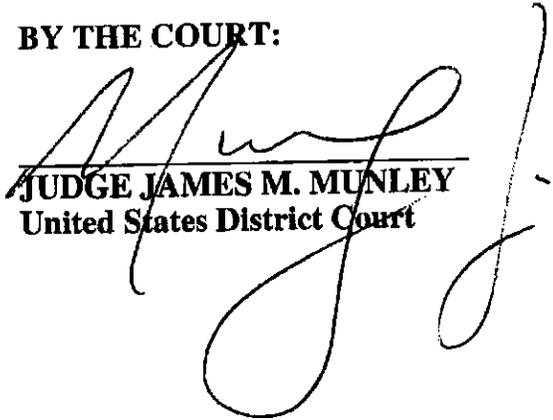
ORDER

AND NOW, to wit, this 14TH day of February 2003, we have before us for disposition Magistrate Judge Thomas M. Blewitt's report and recommendation that proposes the dismissal of plaintiff's complaint. No objections to the report and recommendation have been filed, and the time for such filing has passed. Therefore, in order to decide whether to adopt the report and recommendation, we must determine whether a review of the record evidences plain error or manifest injustice. See e.g., Sullivan v. Cuyler, 723 F.2d 1077, 1085 (3d Cir. 1983); FED. R. CIV. P. 72(b) 1983 Advisory Committee Notes ("When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record to accept the recommendation"); and 28 U.S.C. § 636(b)(1).

After a careful review, we find neither clear error on the face of the record nor a manifest injustice, and therefore we shall adopt the report and recommendation.

- 1) The magistrate's report and recommendation (Doc. 7) is hereby **ADOPTED**; and
- 2) The Clerk of Court is directed to close this case.

BY THE COURT:


JUDGE JAMES M. MUNLEY
United States District Court

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

1/27/03 JRS
7

BARRY CORLEY ,

Plaintiff

v.

GRIEVANCE COORDINATOR
BARNETT, et al.,

Defendants

CIVIL ACTION NO. 3:CV-02-2324

(Judge Munley)

(Magistrate Judge Blewitt)

FILED
SCRANTON

JAN 27 2003

PER JRS
DEPUTY CLERK

REPORT AND RECOMMENDATION

Plaintiff, an inmate at the State Correctional Institution at Dallas, Pennsylvania ("SCI-Dallas"), filed this civil rights action pursuant to 42 U.S.C. § 1983 on December 20, 2002. Plaintiff has also filed an application to proceed *in forma pauperis*. (Docs. 1 and 4).¹

The case is presently before the court for purposes of initial screening. Section 1915(e)(2), provides:

(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that (A) the allegation of poverty is untrue; or (B) the action or appeal (i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.

In reviewing the complaint under 28 U.S.C. §1915(e)(2)(B)(ii), we have determined that the Plaintiff's complaint is subject to dismissal.

¹As stated, the Plaintiff completed an application to proceed *in forma pauperis* and authorization to have funds deducted from his prison account. The court then issued an administrative order directing the warden to commence the withdrawal of the full filing fee due the court from the Plaintiff's prison trust fund account.

I. Discussion

Federal Rule of Civil Procedure 12(b)(6) allows for dismissal of a claim or claims for "failure to state a claim upon which relief can be granted..." When evaluating a complaint under Rule 12(b)(6), 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).

The Plaintiff is attempting to pursue an action for the alleged fabrication of a misconduct report and grievance response under §1983. Plaintiff claims that SCI-Dallas Sergeant Lewis fabricated a misconduct report against him charging him with destroying his mattress and covering it with an unknown substance. (Doc. 1, ¶ IV.). Plaintiff states that Defendant Barnett, Grievance Coordinator, fabricated a response to Plaintiff's grievance over the misconduct report by indicating that Plaintiff admitted that he urinated in his cell. (*Id.*). However, it is clear from the complaint that the Plaintiff is seeking to challenge the validity of his misconduct report and conviction, as well as his subsequent disciplinary confinement and "illegal lock-up." An action which challenges either the lawfulness of a conviction or confinement is not cognizable under §1983. "In order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by

actions whose unlawfulness would render a conviction or sentence invalid, a §1983 Plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. §2254." *Heck v. Humphrey*, 512 U.S. 477, 487 (1994). The district court must consider whether a judgment in favor of the Plaintiff would imply invalidity of the Plaintiff's conviction or sentence. If so, "the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated." *Id.*

In the instant matter, a judgment in the Plaintiff's favor would clearly imply invalidity of the Plaintiff's misconduct report conviction. Unless the Plaintiff can demonstrate that his misconduct sentence has already been invalidated, reversed, or expunged, the complaint must be dismissed. We are confident that at the present time, the Plaintiff cannot demonstrate that his misconduct sentence has been invalidated, reversed, or expunged. In fact, as relief, Plaintiff requests expungement of his misconduct report. (*Id.*, ¶ V. 3.). Accordingly, we find that the Plaintiff fails to state a claim upon which relief can be granted, and dismissal of the complaint under 28 U.S.C. §1915(e)(2)(B)(ii) is appropriate.²

Moreover, in this case, Plaintiff seeks as relief damages for "pain and suffering" and for "intentional infliction of mental stress." (*Id.*, ¶ V. 2.). A majority of Circuits, including the Third Circuit, have held that 42 U.S.C. § 1997e(e) applies to claims in which a Plaintiff alleges

²We note that Plaintiff did not allege any deprivation of his Fourteenth Amendment due process rights with respect to his misconduct hearing.

constitutional violations so that the Plaintiff cannot recover compensatory damages for mental or emotional injury for a constitutional violation in the absence of a showing of actual physical injury. See *Fontroy v. Owens*, 150 F. 3d 239, 244 (3d Cir. 1998) (Federal law does not provide inmates, who suffer no present physical injury, a cause of action for damages for emotional distress allegedly caused by exposure to asbestos); *Thompson v. Carter*, 284 F. 3d 411, 417 (2d Cir. 2002); *Herman v. Holiday*, 238 F.3d 660, 665 (5th Cir. 2001) (applying § 1997e(e) to an Eighth Amendment claim where Plaintiff made no showing of physical injury); *Allah v. Al-Hafeez*, 226 F. 3d 247, 250 (3d Cir. 2000) (rejecting Plaintiff's argument that his First Amendment claim, on which he sought to recover compensatory damages without alleging a physical injury, was not subject to § 1997e(e)); and *Harper v. Showers*, 174 F. 3d 716, 719 (5th Cir. 1999) (applying § 1997e(e) to bar damages for emotional suffering resulting from alleged Eighth Amendment violation).

In this case, Plaintiff has not alleged any physical injury.

Section 1997e(e) provides as follows:

Limitation on recovery

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**. (Emphasis added).

42 U.S.C. § 1997e(e).

As Plaintiff is an inmate, he cannot pursue this action for mental or emotional injury since he has not alleged any physical injury.

Finally, with respect to Defendant Barnett, Grievance Coordinator, Plaintiff claims that he fabricated statements in his response to Plaintiff's grievance. Plaintiff fails to state a claim against this

Defendant. Defendant Barnett, Grievance Coordinator, cannot be held liable for his role in the grievance process, as Plaintiff does not have a constitutional right to such a process. To the extent Plaintiff alleges that this Defendant provided him with an unsubstantiated response and presumably denied his grievance, Plaintiff does not state a claim. The law is well-settled that there is no constitutional right to a grievance procedure. See *Jones v. North Carolina Prisoners' Labor Union, Inc.*, 443 U.S. 119, 137-138 (1977). Therefore, with respect to Plaintiff's allegation that Defendant Barnett fabricated a response and denied his grievance, said allegations fail to state a claim upon which relief may be granted. See *Johnson v. Harding*, Civil No. 3:CV-99-977, M.D. Pa., slip op. p. 8 (2-29-00); see also *Chimenti v. Kimber*, Civil No. 3:CV-01-0273, M.D. Pa., slip op. p. 18 n. 8 (3-15-02).

Based on the foregoing, it is respectfully recommended that the Plaintiff's complaint be dismissed for failure to state a claim.



THOMAS M. BLEWITT
United States Magistrate Judge

Dated: January 27, 2003