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

BARRY CORLEY,	:	**No. 3:03cv1509**
Plaintiff	:	
	:	**(Judge Munley)**
v.	:	
	:	
IAN W. TAGGART,	:	
KRISTIN REISINGER and	:	
TIMOTHY A. HOLMES,	:	
Defendants	:	

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> 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.
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> 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.
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> 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.

Corley v. Correctional Officers Pelter and Schultz, Docket No. 3:02cv798, (M.D.Pa. June 24, 2003) at 1 - 2.

We dismissed the case for failure to state a claim upon which relief could be granted.

We held that this court could not file state criminal charges against the defendants, as the plaintiff sought. We also concluded that plaintiff had not properly pled a procedural or substantive due process violation, and he had failed to state a claim for compensation for alleged psychological damages.

Plaintiff filed a motion to vacate the order dismissing the case. We deemed the motion to be a motion for reconsideration and denied it on July 18, 2003. Plaintiff then filed an appeal with the Third Circuit Court of Appeals. The Third Circuit dismissed the appeal on October 31, 2003, for failure to prosecute.

Subsequently, the plaintiff filed the instant action. In his complaint he asserts that the defendants filed false affidavits in connection with the prior law suit. The magistrate suggests that we dismiss the case for failure to state a claim upon which relief can be granted.

Standard of review

In disposing of objections to a magistrate's report and recommendation, the district court must 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). This court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate. The judge may also receive further evidence or recommit the matter to the magistrate with instructions. Id.

Discussion

The plaintiff filed the instant action on August 28, 2003. On September 15, 2003, plaintiff filed an application to proceed *in forma pauperis*. The magistrate judge performed an initial screening of the complaint pursuant to 28 U.S.C. § 1915 and determined that the plaintiff is unable to maintain his action.

The law provides as follows:

> **(a) Screening. -** The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.
> **(b) Grounds for dismissal. -** On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint -
> (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or
> (2) seeks monetary relief from a defendant who is immune from such relief.

28 U.S.C. § 1915A.

Further, with regard to plaintiffs who seek to proceed *in forma pauperis*, the law provides:

> 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.

28 U.S.C. § 1915(e)(2).

Plaintiff's complaint fails to state a claim upon which relief may be granted. The complaint concerns the previous civil rights action discussed above. It asserts that Defendants Taggart and Reisinger submitted false affidavits in the prior case in support of a motion to dismiss. The magistrate concludes that it is proper to dismiss this case as he has not properly alleged a violation of a constitutional right. We agree.

Plaintiff filed this action pursuant to pursuant to 42 U.S.C. § 1983. In pertinent part, section 1983 provides as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress . . . .

42 U.S.C. § 1983.

Thus, to establish a claim under section 1983, two criteria must be met. First, the conduct complained of must have been committed by a person acting under color of state law. Second, the conduct must deprive the complainant of rights secured under the Constitution or federal law. Sameric Corp. of Delaware, Inc. v. City of Philadelphia, 142 F.3d 582, 590 (3d Cir. 1998).

In the instant case, it is clear that the defendants are state actors. Therefore, we must examine the complaint to determine if the plaintiff has alleged a violation of a right or rights secured by the Constitution or federal law. The plaintiff claims that the following violations

occurred: 1) Violation of his First Amendment right to file grievances; 2) violation of the Privacy Act; 3) violation of First Amendment right to petition the government; 4) Violation of his right to seek review to exhaust administrative remedies prior to seeking judicial review.

Plaintiff's claim for relief under the "privacy act" is not cognizable. The statutory section that the plaintiff refers to is 5 U.S.C. 552a(e). This section deals with requirements of federal agencies and their records maintenance. This section is clearly inapplicable to the defendants as the plaintiff is in a state prison and thus rules applicable to federal agencies do not apply to them. Dennie v. University of Pittsburgh School of Medicine, 589 F. Supp. 348, 351-52 (D.C.V.I. 1984).[1]

The remainder of the plaintiff's averments deal with alleged constitutional violations for violating a right to file grievances, exhaust administrative remedies and right to petition the government. The plaintiff's assertions are wholly without merit. These issues, if cognizable at all, would have to have been raised in his previous section 1983 action, which was dismissed. As explained above, that case was dismissed. The plaintiff cannot now attempt to raise these claims in the guise of a separate civil rights action.

Moreover, the affidavits that the plaintiff is complaining about supported the defendants' position that plaintiff did not exhaust his administrative remedies with regard to

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[1]Even if it were a federal agency at issue, plaintiff would have to sue that agency itself, not individual defendants because individual liability does not exist under the Privacy Act. Chocallo v. Bureau of Hearings and Appeals, SSA, 548 F. Supp. 1349, 1369 (D.C.Pa. 1982).

the prior law suit. Failure to exhaust administrative remedies **WAS NOT** the reason that the prior complaint was dismissed. As set forth above, that complaint was dismissed on the merits. Therefore, plaintiff was not damaged whatsoever even if the defendants affidavits were false. His claim was heard on the merits and found to be lacking.

If we were to allow the case to proceed it would be opening the door for every plaintiff filing a civil rights suit to file a second civil rights suit if the defendants deny their actions in the first suit. That would be an untenable situation. Therefore, not having alleged a valid section 1983 claim, plaintiff's complaint must be dismissed. An appropriate order follows.[2]

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[2]Plaintiff has also submitted a motion to amend his complaint. We have reviewed the proposed amendments and as they do not cure the defects of plaintiff's case, the motion to file an amended complaint will be denied.

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