

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 00-3450

JUSTIN M. CORLISS,

Appellant

v.

FILED
SECRET
NOV 2 2001
PER _____
DEPUTY CLERK

JOSEPH W. CHESNEY, Superintendent, SCI-Frackville;
ROBERT D. SHANNON, Deputy Superintendent SCI Frackville;
BRUCE K. SMITH, Deputy Superintendent SCI Frackville;
JIM FORR, Superintendent's Assistant SCI Frackville;
DAVID J. SEARFOSS, Inmate Program Manager SCI Frackville;
JOHN W. KERESTES, Major of the Guard SCI Frackville;
ROBERT S. BITNER, Chief Hearing Examiner State Dept of Corrections;
KEVIN KANE, Hearing Examiner Dept of Corrections;
LT. POPSON, Security Officer SCI Frackville;
LT. KNEAL, Security Officer SCI Frackville;
LEONARD SMITOVITCH, Counselor SCIF; HARNER, Guard at SCIF;
COONEY, Guard at SCIF; KLOCK, Guard at SCIF;
MCPEALE, Guard at SCIF; BURKE, Guard at SCIF

On Appeal From the United States District Court
For the Middle District of Pennsylvania
(D.C. Civ. No. 99-02121)
District Judge: Honorable A. Richard Caputo

Submitted For Possible Dismissal Under 28 U.S.C. § 1915(e)(2)(B) or Summary Action
Under Third Circuit LAR 27.4 and I.O.P. 10.6
July 12, 2001

Before: SLOVITER, BARRY and AMBRO, Circuit Judges.

(Filed: August 6, 2001)

APS-230

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JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Middle District of Pennsylvania and was submitted for possible dismissal under 28 U.S.C. §1915(e)(2)(b) or summary action under Third Circuit LAR 27.4 and I.O.P. 10.6. On consideration whereof, it is now here

ORDERED AND ADJUDGED by this court that the judgment of the District Court entered September 26, 2000, be and the same is hereby affirmed. All of the above in accordance with the opinion of this Court.

ATTEST:

Marcia M. Waldron

Clerk

DATED: 6 August 2001

Certified as a true copy and issued in lieu of a formal mandate on November 1, 2001

Teste:

Kathleen Brunner

Acting Clerk, United States Court of Appeals
for the Third Circuit

OPINION

PER CURIAM

Justin M. Corliss, a prisoner proceeding pro se, filed a civil rights action in the district court alleging violations of his constitutional rights under the First, Fifth, Eighth and Fourteenth amendments. Corliss' forty-page amended complaint alleges harassment by the defendants, such as retaliatory cell searches and pat downs, threats, placement in disciplinary custody as a result of false misconduct reports and unfair disciplinary hearings, placement in the restrictive housing unit without notice or cause, denial of work release, interfering with his mail, and denying him access to the law library, his law materials, and rule book. Corliss claims that all of the defendants' actions, which he alleges occurred from July 1999 until after he filed suit in this case, were in retaliation for his having sought redress of his grievances against correctional officers there. Corliss also claims that his due process rights were violated, as well as his right to be free from cruel and unusual punishment. Finally, Corliss alleges under 42 U.S.C. § 1985 and §1986 that each of the named defendants conspired to retaliate against him for having complained about them and that certain named defendants negligently failed to intervene to stop it. Corliss seeks injunctive relief and compensatory and punitive damages.

In his original complaint, Corliss admitted that there was a grievance procedure at the prison and that he had not filed a grievance concerning the facts relating to the

complaint. He explained that “grievances are not allowed to be used to redress misconduct, however an appeal process exists and I did exhaust it.”

The District Court dismissed Corliss’ action without prejudice for failure to exhaust administrative remedies. This timely appeal followed.

Corliss’ allegations that he was wrongly placed in disciplinary custody for a total of seventy-five days during the time period from July 1999 through February 2000 do not state claims upon which relief can be granted.¹ He does not allege a deprivation of a viable liberty interest. See Sandin v. Conner, 515 U.S. 472, 484 (1995) (liberty interests protected by the due process clause are limited to freedom from restraint which imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life). “Although prisoners do not shed all constitutional rights at the prison gate, lawful incarceration brings about necessary withdrawal or limitation of many privileges and rights, a retraction which is justified by considerations underlying the penal system.” Id. at 485. This Court in Griffin v. Vaughn, 112 F.3d 703, 708 (3d. Cir. 1997), held that confinement of a prisoner in restrictive custody for fifteen months did not trigger a constitutionally protected liberty interest. Thus Corliss’ seventy-five day restriction

¹ Corliss attached to his amended complaint the misconduct reports for the four charges he complains of: #A72819 (July 24, 1999 - refusing to work) which was vacated on appeal and expunged from Corliss’ record; #A66378 (July 29, 1999 - unsworn falsifications to authority and lying to an employee) - fifteen days of disciplinary custody; #A22595 (12/9/99 - refusing to obey an order) - thirty days of disciplinary custody; and #A208088 (12/18/99) - thirty days disciplinary custody.

cannot be construed as a violation of his due process rights. Likewise, Corliss' claims regarding classification to more restrictive custody and denial of work release do not state due process claims. See Meachum v. Fano, 427 U.S. 215 (1976) (transfer of state prisoners from medium to maximum security prisons did not implicate or infringe a liberty interest under the due process clause); Asquith v. Department of Corrections, 186 F.3d 407, 412 (3d Cir. 1999) (termination of work-release did not impose atypical and significant hardship on prisoner in relation to the ordinary incidents of prison life and therefore did not deprive him of a protected liberty interest.). Thus, Corliss' due process claims fail as a matter of law.

All of Corliss' remaining claims regarding prison conditions, access to the courts, retaliation, conspiracy and failure to prevent a conspiracy were correctly dismissed without prejudice by the District Court for failure to exhaust administrative remedies. The exhaustion requirement of the Prison Litigation Reform Act of 1996 ("PLRA") applies to grievance procedures "regardless of the relief offered by the administrative procedures." Booth v. Churner, 121 S.Ct. 1819, 1825 (2001). As recognized by the District Court, the PLRA prohibits an inmate from bringing a civil rights suit alleging specific acts of unconstitutional conduct by prison officials until the inmate has exhausted available administrative remedies. 42 U.S.C. § 1997e(a); Nyhuis v. Reno, 204 F.3d 65, 75 (3d Cir. 2000); Booth v. Churner, 206 F.3d 289, 300 (3d Cir. 2000), aff'd on other grounds, 121 S. Ct. 1825 (2001).

Corliss conceded in his complaint that he was aware of the inmate grievance procedure at the prison but did not file a grievance regarding the claims he made in this lawsuit.² Corliss' excuse for non-exhaustion, based on futility and ineffectiveness of the inmate grievance procedure, does not constitute an exception to the exhaustion requirement under the PLRA. See Nyhuis v. Reno, 204 F.3d at 71. Corliss' completion of the appeal of his disciplinary sanctions prior to filing suit applies only to his due process claims. By his own admission, Corliss has not pursued administrative remedies on his remaining claims. Consequently, we agree with the District Court that Corliss has failed to establish that his administrative remedies have been exhausted.

For the foregoing reasons, we will summarily affirm the District Court's order.

² For a full description of the inmate grievance policy, Commonwealth of Pennsylvania, Department of Corrections, Consolidated Inmate Grievance Review System, Policy No. DC-ADM 804, see Booth v. Churner, 206 F.3d at 293 n.2. The policy expressly excepts appeals of disciplinary sanctions from its scope of review. See DC-ADM 804(VI)(E). Appeals of disciplinary sanctions are made pursuant to DC-ADM 801.

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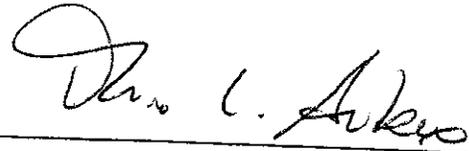
SUR PETITION FOR REHEARING

BEFORE: BECKER, Chief Judge, SLOVITER, MANSMANN, SCIRICA,
NYGAARD, ALITO, ROTH, McKEE, RENDELL, BARRY,
AMBRO and FUENTES, Circuit Judges

The petition for rehearing filed by petitioner in the above-entitled case
having been submitted to the judges who participated in the decision of this court and to
all the other available circuit judges of the circuit in regular active service, and no judge

who concurred in the decision having asked for rehearing; and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court en banc, the petition for rehearing is denied.

By the Court,

A handwritten signature in cursive script, appearing to read "Thomas C. Acker", written over a horizontal line.

Circuit Judge

DATED: 24 OCT 2001