

Certified to be true and correct copy of the original Document on file in this office.
Angie Svonavec
Prothonotary

GREGORY DUNBAR,)
Plaintiff,)
v.)
CAPTAIN SIMOSKO, Head of Security,)
GERALD ROZUM, Superintendent for)
Somerset Department of Corrections,)
Defendants.)

IN THE COURT OF COMMON
PLEAS OF SOMERSET COUNTY,
PENNSYLVANIA

NO. 352 CIVIL 2010

FILED FOR RECORD
2010 MAR -6 AM 11:46
ANGIE SVONAVEC
PROTHONOTARY
SOMERSET, PA

IFP DENIAL ORDER

MEMORANDUM

On April 19, 2010, Plaintiff Gregory Dunbar, submitted a request to proceed in forma pauperis in a civil action against the Defendants, including Captain Simosko and Gerald Rozum, Superintendent of the SCI Somerset. For the reasons stated below, Plaintiff's request is denied.

Pursuant to Pa.R.Civ.P. 240(b), a person "who is without financial resources to pay the costs of litigation is entitled to proceed in forma pauperis." This general rule, however, is subject to certain limitations and exceptions. Among those limitations is subpart (j) which provides:

If, simultaneous with the commencement of an action or proceeding or the taking of an appeal, a party has filed a petition for leave to proceed in forma pauperis, the court prior to acting upon the petition may dismiss the action, proceeding or appeal if the allegation of poverty is untrue or if it is satisfied that the action, proceeding or appeal is frivolous.

Note: A frivolous action or proceeding has been defined as one that "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1990).

Pa.R.Civ.P. 240(j) (emphasis added); see also Pa.R.Civ.P. 240, note 4 (frivolous actions). Simply, Rule 240 allows us to dismiss the case if we find the action to be frivolous. Notably, we may only dismiss an action under this Rule if we have not yet granted the plaintiff in forma pauperis status. In other words, once we grant the plaintiff in forma pauperis status, we are not permitted to dismiss his or her action under the Rule 240 test of frivolity. *Grosso v. Love*, 667 A.2d 43, 44 (Pa. Commw. 1995). Therefore, we take this opportunity to review the merits of Plaintiff's Complaint now, before granting him in forma pauperis status.

The action, he claims, is authorized by 42 U.S.C. §1983 to redress the deprivation, under color of law, of rights secured by the Constitution. Mr. Dunbar asserts that his commitment record to the SCI is "contraband" because it contains items that are "altered from its original condition", and accordingly, pursuant to DOC Policy must be reported to authority. He, indeed, reported the same to his Corrections superior, Captain Simosko, who did nothing about the allegedly altered documents. Next, he reported the same to the Superintendent, Gerald Rozum, who directed him to make a report to the Pennsylvania State Police. Upon receiving the report, the PSP directed the Plaintiff back to Captain Simosko who, according to Plaintiff, has taken no action, and such failure "to comply with their own policy concerning contraband violates plaintiff [sic] federal due process rights." Apparently, Plaintiff believes that it is Captain Simosko's duty to investigate the Plaintiff's commitment papers to determine why certain Preliminary Hearing proceedings from the courts of Bucks County do not correspond with his conviction records. Documentation set forth as exhibits to his complaint reveal the readily known fact that the District Magistrate dockets numbers are not used for the Common Pleas

docket numbers when a criminal matter is bound over for court and identified by the Clerk of Courts for further processing.

Without expending substantial dictum in arriving at our conclusion in this matter, we simply state that Plaintiff has failed to relate the specific constitutional provision which was violated for which civil money damages are appropriate under 42 U.S.C. §1983. Certainly, the presence of commitment records which, although unexplained to Plaintiff's satisfaction, fail to correlate Magistrate docket numbers with Common Pleas docket numbers does not raise to the level of being contraband for which the DOC must take action. With almost twenty years after the timing of the suspicious Preliminary Hearing dockets, the Plaintiff's challenge to his incarceration is long overdue. Assuming we believed every fact that Plaintiff alleges is true, we see no cause of action for this court.

Having found that Plaintiff has failed to set forth any arguable basis for a cause of action, we simultaneously dismiss his complaint and deny his request to proceed in forma pauperis.

GREGORY DUNBAR,
Plaintiff,
v.

CAPTAIN SIMOSKO, Head of Security,
GERALD ROZUM, Superintendent for
Somerset Department of Corrections,
Defendants.

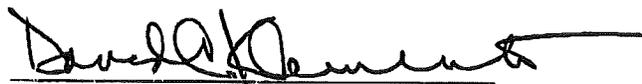
) IN THE COURT OF COMMON
) PLEAS OF SOMERSET COUNTY,
) PENNSYLVANIA
)

) NO. 352 CIVIL 2010
)
)
)

ORDER

AND NOW, this 5th day of March, 2013, in accordance with the foregoing Memorandum, Gregory Dunbar's request to proceed in forma pauperis is DENIED under Pa.R.Civ.P. 240(j) regarding the rule for frivolous actions. It is further ordered that the above-captioned civil action be DISMISSED WITH PREJUDICE.

BY THE COURT:



DAVID C. KLEMENTIK, J.