

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Dwayne Hill,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 53 M.D. 2012
	:	
Commonwealth of Pennsylvania,	:	Submitted: June 22, 2012
Department of Corrections and the	:	
Secretary for the Department of	:	
Corrections,	:	
	:	
Respondents	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE COHN JUBELIRER**

FILED: August 15, 2012

Before this Court are the Preliminary Objections (POs) filed by the Commonwealth of Pennsylvania, Department of Corrections, and the Secretary for the Department of Corrections (together, Department) to the Petition for Review (Petition) filed in this Court’s original jurisdiction by Dwayne Hill (Hill).¹ In the Petition, Hill seeks a declaratory judgment holding that the Department’s: (1) failure to provide medical care to him constitutes deliberate indifference; and (2) punishment

¹ This Court has original jurisdiction pursuant to Section 761 of the Judicial Code, 42 Pa. C.S. § 761.

of Hill for behavior caused or influenced by his mental illness violates the United States Constitution. Additionally, Hill seeks a permanent injunction prohibiting the Department from placing him in a double-cell. In its POs, the Department asserts that Hill's Petition should be dismissed because Hill fails to state a claim for deliberate indifference under the Eighth Amendment of the United States Constitution.² The Department also asserts that the Petition should be dismissed under Section 6602(f) of the Prison Litigation Reform Act (PLRA), 42 Pa. C.S. § 6602(f) (relating to the dismissal of prison conditions litigation based on prior abusive litigation), because at least three of Hill's previous prison conditions litigation matters were dismissed pursuant to Section 6602(e)(2) of the PLRA.³ Upon review, we sustain the Department's PO based upon Hill's failure to state a claim, and dismiss Hill's Petition with prejudice.

Hill is an inmate currently incarcerated at State Correctional Institution (SCI)-Houtzdale. He filed his Petition in this Court's original jurisdiction on January 31, 2012. In the Petition, Hill avers that he suffers from an unspecified mental illness

² The Eighth Amendment states that neither "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII.

³ Section 6602(e)(2) of the PLRA states that the court may dismiss prison conditions litigation at any time if it determines that:

[t]he prison conditions litigation is frivolous or malicious or fails to state a claim upon which relief may be granted or defendant is entitled to assert a valid affirmative defense, including immunity, which if asserted, would preclude the relief.

42 Pa. C.S. § 6602(e)(2).

and a chronic breathing disorder. According to Hill, he has inhabited a single-person cell for the majority of his twenty year incarceration. Prison officials have occasionally attempted to double-cell Hill. During one occasion, Hill got into a physical altercation with another inmate. After being double-celled a second time, Hill was found unresponsive in his cell. Hill set his mattress on fire during a third attempt to double-cell him. Hill claims that the Department has recently double-celled him as a means to punish him for behavior he claims is influenced by his mental illness, asserts that being double-celled induces significant stress, and causes him to hyperventilate. Hill states that he has not seen the prison psychiatrist in almost one year and that he has never seen the prison psychologist; the Department denies this. Hill acknowledges that prison officials often double-cell inmates based on a lack of bed space in the prison facilities. (Petition at ¶¶ 2-9; POs at ¶ 27.)

In evaluating the Department's POs, we first address the Department's demurrer. Pursuant to Rule 1028(a)(4) of the Pennsylvania Rules of Civil Procedure, a party may file a preliminary objection based on a pleading's legal insufficiency (demurrer). Pa. R.C.P. No. 1028(a)(4). In our review of whether to sustain a demurrer, "this Court must accept as true [a petitioner's] well-pleaded allegations of material fact as well as all reasonable inferences deducible therefrom." Sweatt v. Department of Corrections, 769 A.2d 574, 576 (Pa. Cmwlth. 2001). A petitioner must state the material facts that support his claim. Pennsylvania Rule of Civil Procedure 1019(a), Pa. R.C.P. No. 1019(a). A demurrer will only be sustained in cases which are "clear and free from doubt" and "where it appears with certainty that the law permits no recovery under the allegations pleaded." Sweatt, 769 A.2d at 577.

Hill argues that the Department violated the Eighth Amendment when it: (1) failed to provide him with adequate medical care; and (2) double-celled him. We will address each argument in turn.

To establish an Eighth Amendment claim based on inadequate medical care, an inmate must show that prison officials were deliberately indifferent to his serious medical needs. Estelle v. Gamble, 429 U.S. 97, 104 (1976). “In order to state a cognizable claim, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs. It is only such indifference that can offend ‘evolving standards of decency’ in violation of the Eighth Amendment.” Id. at 106 (citation omitted). “Therefore, to succeed under these principles, plaintiffs must demonstrate (1) that the defendants were deliberately indifferent to their medical needs and (2) that those needs were serious.” Rouse v. Plantier, 182 F.3d 192, 197 (3d Cir. 1999). Deliberate indifference to an inmate’s medical well-being exists where a prison official: “(1) knows of a prisoner’s need for medical treatment but intentionally refuses to provide it; (2) delays necessary medical treatment based on a non-medical reason; or (3) prevents an inmate from receiving needed or recommended medical treatment.” Rouse, 182 F.3d at 197. “A ‘serious’ medical need may fairly be regarded as one that is so obvious that a lay person would easily recognize the necessity for a doctor’s attention.” Farmer v. Carlson, 685 F. Supp. 1335, 1339 (M.D. Pa. 1988). Non-medical prison officials may generally assume that an inmate is competently cared for where an inmate receives treatment from medical professionals. Spruill v. Gillis, 372 F.3d 218, 236 (3d Cir. 2004).

Here, the allegations of Hill’s Petition fail to state a legally valid claim for deliberate indifference based on inadequate medical care. Hill claims that the Department double-celled him as a disciplinary measure for misconduct arising from his mental illness. (Petition at ¶¶ 3, 6.) Hill alleges that the Department should have, instead, responded by providing him with mental health treatment, and that he “has not seen the psychiatrist in almost a year.” (Petition at ¶ 7.) The Department responds that Hill never requested such treatment, even though he understands how to contact the prison’s mental healthcare services. (Department Br. at 11.) In both his Petition and letters to prison officials, Hill simply states that he has not seen the psychiatrist in almost one year and has never seen the psychologist. (Petition at ¶ 7; Hill’s Request to Staff Member, Ex. C.) Furthermore, Hill does not sufficiently allege that his mental illness is serious. Hill does not allege facts in the Petition which indicate that his condition is obvious to non-medical prison officials, nor does he include the name or severity of his condition. Because Hill does not assert that: he ever requested medical treatment for his mental illness; prison officials knew of his need for medical treatment but intentionally refused to provide it; prison officials delayed necessary medical treatment based on a non-medical reason; prison officials prevented Hill from receiving needed or recommended medical treatment; or that his medical need was *serious*, his Petition fails to establish a claim of deliberate indifference under the Eighth Amendment.⁴

⁴ Hill argues in his Petition and response to the Department’s POs that the Department was also deliberately indifferent in that it knowingly tolerated inadequate mental health staff. (Hill Br. at 5; Response in Opposition to POs at ¶¶ 12-13.) However, Hill’s Petition fails to include any facts in support of this claim; therefore, this allegation is not well-plead and we decline to consider it further. Pa. R.C.P. No. 1019(a).

Hill also alleges in his Petition that the Department violated his constitutional rights when it double-celled him as a disciplinary action. (Petition at ¶ 6.) In Rhodes v. Chapman, 452 U.S. 337 (1981), the United States Supreme Court held that double-celling does not violate the Eighth Amendment, reasoning that prison conditions may be “restrictive and even harsh,” but do not qualify as cruel and unusual. Id. at 347. Under Pennsylvania law, an “inmate does not have a right to be housed in a particular facility or a particular area within a facility.” Clark v. Beard, 918 A.2d 155, 160 (Pa. Cmwlth. 2007) (quoting 37 Pa. Code § 93.11).

Applying the forgoing law to the alleged facts, we conclude that Hill’s allegations fail to state a claim for which relief may be granted. When the U.S. Supreme Court held that double-celling does not violate an inmate’s constitutional rights, it clarified the states’ ability to determine prison conditions. Rhodes, 452 U.S. at 352. States may legislate in regard to double-celling and prison condition standards generally, though the courts may determine whether conditions are cruel and unusual. Id. Pennsylvania repealed its “one man, one cell” statutes in 1981⁵ and, in 1986, our own Supreme Court concluded that a lower court erred in applying a “one man, one cell” standard because it was based on the repealed statutes. Jackson v. Hendrick, 509 Pa. 456, 470-71, 503 A.2d 400, 407-08 (1986). Prison officials in Pennsylvania have broad discretion to select where to house inmates in a prison facility. Clark, 918 A.2d at 160. Hill acknowledges that there is a valid penological interest in the use of double-celling, noting in his Petition that prison officials double-

⁵ See Section 1 of the Act of July 10, 1981, P.L. 218, 61 P.S. § 2191.

cell inmates due to the “obvious pressure to resolve the [D]epartment’s bed space problem.” (Petition at ¶ 8.) Accordingly, there is no doubt that the law will not permit recovery for Hill’s Eighth Amendment claim based on double-celling.⁶

Because Hill fails to state a claim in his Petition for which relief may be granted, the Department’s PO based upon Pa. R.C.P. No. 1028(a)(4) is sustained and Hill’s Petition is dismissed with prejudice.⁷

RENÉE COHN JUBELIRER, Judge

⁶ In his brief, Hill argues that the Department failed to point to specific defects in his Petition and that, as a pro se inmate litigant, any defect in his pleadings should be excused. (Hill Br. at 3-4.) However, the Department’s POs adequately allege that the Petition is defective because, assuming what Hill has averred is true, those averments are legally insufficient to support a claim.

⁷ Due to our sustaining of the Department’s PO based upon the failure to state a claim, we need not address the Department’s motion to dismiss based upon the PLRA. However, this Court could have also granted the Department’s request to dismiss Hill’s Petition, pursuant to Section 6602(f)(1) of the PLRA, because three of his prior prison condition actions were dismissed as frivolous or for failure to state a claim for which relief may be granted. Hill has had at least three previously-filed prison conditions matters dismissed as frivolous or for failure to state a claim. See Hill v. Department of Corrections (Pa. Cmwlth., No. 51 M.D. 2011, filed May 12, 2011) (this Court sustained the Department’s preliminary objection and dismissed Hill’s Petition for Review finding that his allegations were conclusory and that he failed to state a claim for which relief could be granted); Commonwealth v. Hill (Pa. Cmwlth., No. 1821 C.D. 2008, filed July 17, 2009), slip op. at 16 (this Court affirmed the trial court’s dismissal of Hill’s counter-claim for failure to state a claim); Hill v. Burks, et al. (Pa. Cmwlth., No. 1642 C.D. 2007, filed February 11, 2008), slip op. at 7 (this Court affirmed the trial court’s dismissal of Hill’s due process litigation for failure to state a claim).

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	:	
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ORDER

NOW, August 15, 2012, the Preliminary Objection, based upon Pa. R.C.P. No. 1028(a)(4), filed by the Department of Corrections and the Secretary for the Department of Corrections to Dwayne Hill’s Petition for Review (Petition) is hereby **SUSTAINED** and the Petition is hereby **DISMISSED WITH PREJUDICE**.

RENÉE COHN JUBELIRER, Judge