

UNITED STATES DISTRICT COURT  
FOR THE  
MIDDLE DISTRICT OF PENNSYLVANIA

RHONSHAWN JACKSON,

Plaintiff

v.

UNIT MANAGER WAYLIN, et al.,

Defendants

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CIVIL NO. 3:CV-13-0508

(Judge Kosik)

**MEMORANDUM**

Rhonshawn Jackson, an inmate confined at the State Correctional Institution at Albion, Pennsylvania, filed this civil rights action pursuant to 42 U.S.C. § 1983. The matter proceeds on an amended complaint (Doc. 8.) Named as Defendants are Unit Manager Waylin<sup>1</sup>, Correctional Officer Huber, Major Leggore and Superintendent Harry, all employees at SCI-Camp Hill. Also named are Unit Manager Buzas and Captain Walker, employees at SCI-Fayette. In the complaint, Plaintiff alleges that Defendants violated his First Amendment rights when they refused to send his personal and legal property with him when he was transferred from SCI-Camp Hill to SCI-Fayette, and subsequently destroyed the property. He seeks declaratory and

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<sup>1</sup> According to Defendants, the correct spelling of this Defendant's name is Whalen.

injunctive relief, as well as monetary damages. Presently pending and ripe for consideration is Defendants' motion to dismiss the amended complaint. (Doc. 20.) Also pending is an amended complaint (Doc. 21) filed on May 24, 2013. The Clerk of Court will be directed to strike this document from the record in that it is a duplicate copy of the standing amended complaint (Doc. 8). For the reasons that follow, Defendants' motion to dismiss will be granted.

### **I. Allegations in Complaint**

On July 18, 2012, while confined at SCI-Camp Hill, Plaintiff learned through Defendant Whalen that he was going to be transferred to SCI-Fayette the following day. He was told that all the belongings in his cell would need to be packed. (Doc. 1 at 3.) Plaintiff stated that he would like to be present when the property was packed because he had legal materials that needed to go with him. Whalen said that Defendant Huber had been instructed to have Plaintiff pack the property and then would take Plaintiff to inventory it prior to the transfer.

On July 18, 2012, Huber came to Plaintiff's cell and retrieved two (2) boxes of property from Plaintiff. Plaintiff states that he gave him 1 box of personal property and 1 box containing 17 legal books, a 17-page reconsideration brief for a writ of certiorari in the Pennsylvania Supreme Court in the case of Jackson v. Taylor, No. 12-5092, and a 24-page civil lawsuit he was planning on filing against several SCI-Camp Hill employees. (Id.)

Hours later, Huber came back to Plaintiff's cell and stated he did not have time to get Plaintiff to do the inventory. He told Plaintiff that he packed all of the legal books and legal materials up, and that they would be ready to be transferred with him. Plaintiff was also told that he would have to fill out a cash slip for his excess boxes of property to be sent with him. (Id. at 4.)

The following day, Plaintiff was transferred to SCI-Fayette. On July 20, 2012, he was taken to inventory his property and discovered that his sunglasses and cup were broken, and that his 17 legal books, his reconsideration brief and his 24-page § 1983 complaint, which he was preparing, were missing. (Id.) As a result, he claims he lost his appellate rights in the United States Supreme Court, and was also unable to seek relief for constitutional violations by pursuing his complaint. (Id.)

On the same date, a grievance was filed with respect to the missing property. On August 28, 2012, a response was received from Defendant Leggore. Leggore told Plaintiff he needed to fill out a cash slip and an address for his legal property. Plaintiff claims he did so, and never received a response.

Plaintiff thereafter spoke with Defendant Buzas with respect to his missing property. He also showed him Leggore's response to his grievance. Buzas told Plaintiff to fill out a cash slip and that he would sign, stamp and mail it out for him. (Id.) Plaintiff did so, and then Buzas processed the slip and sent it to Leggore on September 3, 2012.

On September 3, 2012, Plaintiff appealed Leggore's decision to Defendant Harry, and received Harry's response on September 28, 2012. Plaintiff sent a second cash slip to Harry. On or about October 15, 2012, Plaintiff showed Harry's response to Buzas, and complained that he was taking the grievance to "Camp Hill" because he still had not received his property. Buzas asked him to hold off and let him call Defendant Leggore. Leggore told Buzas he was not sending Plaintiff his property, and was not sending it to the address provided on the cash slip. As such, Plaintiff then filed his appeal with Camp Hill. (Id. at 5.)

On November 30, 2012, Plaintiff told Defendant Walker about his missing legal property, and how he was not permitted to be present when it was inventoried before leaving SCI-Camp Hill. Plaintiff states that when he further examined his DC-153 property inventory receipt on this date, he noticed that Huber had stated "ship home or destroy." Plaintiff claims this was in violation of DC-ADM 815 because legal property is to go with inmates when they are transferred, and any excess is to be shipped to the receiving institution.

On December 7, 2012, Walker informed Plaintiff that he spoke to Leggore and was waiting for him to inspect Plaintiff's DC-153 with respect to the legal property. When Plaintiff failed to hear anything back, he sent a request slip to Buzas. (Id. at 6.) When he failed to receive a response from Buzas, he commenced this action. He claims that Defendants Whalen, Harry, Leggore, Buzas and Walker are deliberately

indifferent for failing to train their personnel, to enforce policies that would have prevented his injuries, and to properly investigate his claims and grievances.

## **II. Motion to Dismiss Standard**

Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for the dismissal of complaints that fail to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). When ruling on a motion to dismiss under Rule 12(b)(6), the court must “accept all factual allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief.” Gelman v. State Farm Mut. Auto. Ins. Co., 583 F.3d 187, 190 (3d Cir. 2009)(quoting Phillips v. County of Allegheny, 515 F.3d 224, 233 (3d Cir. 2008)); see also Kanter v. Barella, 489 F.3d 170, 177 (3d Cir. 2007)(quoting Evancho v. Fisher, 423 F.3d 347, 350 (3d Cir. 2005)).

Federal notice and pleading rules require the complaint to provide “the defendant notice of what the ... claim is and the grounds upon which it rests.” Phillips, 515 F.3d at 232 (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)). To test the sufficiency of the complaint in the face of a Rule 12(b)(6) motion, the court must conduct a three-step inquiry. See Santiago v. Warminster Twp., 629 F.3d 121, 130-31 (3d Cir. 2010). In the first step, “the court must ‘tak[e]

note of the elements a plaintiff must plead to state a claim.” Id. (quoting Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct. 1937, 1947, 173 L. Ed. 2d 868 (2009)). Next, the factual and legal elements of a claim should be separated; well-pleaded facts must be accepted as true, while mere legal conclusions may be disregarded. Id.; see also Fowler v. UPMC Shadyside, 578 F.3d 203, 210-11 (3d Cir. 2009). Once the well-pleaded factual allegations have been isolated, the court must determine whether they are sufficient to show a “plausible claim for relief.” Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct. at 1950, 173 L. Ed. 2d 868 (citing Twombly, 550 U.S. at 555 (requiring plaintiffs to allege facts sufficient to “raise a right to relief above the speculative level”). A claim “has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S. 662, 129 S. Ct. at 1949, 173 L.Ed.2d 868. **III.**

## **Discussion**

### **A. Claims against Defendants in their Official Capacities**

Defendants first maintain that all claims against them in their official capacities should be dismissed in that any such claims for money damages are barred by the Eleventh Amendment. The Eleventh Amendment precludes federal court jurisdiction over suits by private parties against states or their agencies unless sovereign immunity has expressly been waived. United States v. Mitchell, 445 U.S. 535, 538, 100 S.Ct. 1349, 63 L.Ed.2d 607 (1980). By statute, the Commonwealth of

Pennsylvania has specifically withheld its consent to be sued. See 42 Pa. Cons. Stat. Ann. § 8521(b); see also Laskaris v. Thornburgh, 661 F.2d 23, 25 (3d Cir. 1981).

The doctrine of sovereign immunity also extends to a state official in his or her official capacity because “it is not a suit against the official but rather is a suit against the official’s office. As such, it is no different from a suit against the State itself.”

Garden State Elec. Inspection Servs. v. Levin, 144 F. App’s 247, 151 (3d Cir.

2005)(quoting Will v. Mich. Dept. of State Police, 491 U.S. 58, 71, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989)). In Will, the Supreme Court held that a state and state

officers acting in their official capacities are not “persons” against whom a claim for money damages under § 1983 can be asserted. Will, 491 U.S. at 64. However, the

Eleventh Amendment does not preclude a suit against a state official acting in his or her individual capacity. Hafer v. Melo, 502 U.S. 21, 31, 112 S.Ct. 358, 116 L.Ed.2d

301 (1991); Koslow v. Pennsylvania, 302 F.3d 161, 168 (3d Cir. 2002). Accordingly,

Plaintiff’s claims for money damages against the DOC Defendants in their official capacities will be dismissed. To the extent that Plaintiff has brought § 1983 claims against Defendants in their individual capacities, these claims remain viable and will be addressed by the court herein.

#### **B. Personal Involvement**

Defendants next seek to dismiss all claims against Defendants Harry, Leggore, Whalen, Buzas and Walker because Plaintiff has failed to show their personal

involvement in the alleged unconstitutional conduct. Two elements must be present in order to state a § 1983 claim: (1) the conduct complained of must have deprived the plaintiff of rights, privileges and immunities secured by the Constitution or laws of the United States; and (2) the conduct must have been committed by a person acting under color of state law. See Lugar v. Edmondson Oil Co., 457 U.S. 922, 923 (1982); Kost v. Kozakiewicz, 1 F.3d 176, 184 (3d Cir. 1993). Plaintiff must demonstrate that each Defendant was personally involved in the alleged wrongful actions either by actual conduct, or knowledge of and acquiescence in the wrongful actions. Rode v. Dellarciprete, 845 F.2d 1195, 1207-08 (3d Cir. 1988). Defendants in “a civil rights action must have personal involvement in the alleged wrongs; liability cannot be predicated solely on the operation of respondeat superior.” Rode, 845 F.2d at 1207. Thus, a mere linkage in the prison chain of command is not sufficient to demonstrate personal involvement. Rather, the requirement may be satisfied by a showing of “personal direction or of actual knowledge and acquiescence.” Id. at 1207. The supervisory official must have played an “affirmative part” in the constitutional misconduct alleged. See Chinchello v. Fenton, 805 F.2d 126,133 (3d Cir. 1986). Personal involvement cannot be premised upon participation in the after-the-fact review of an administrative remedy request or appeal, see Rode, 845 F.2d 1208, or a plaintiff’s perception that his grievance was not properly processed, investigated or that the grievance process is inadequate, see

Owens-Ali v. Pennell, 672 F. Supp. 2d 647, 654 (D. Del. 2009).

In reviewing the complaint, there are no allegations of personal involvement set forth against Defendant Whalen with respect to the inventorying or shipping of Plaintiff's property. As such, Whalen is properly dismissed from this action. With respect to Defendants Buzas and Walker, Plaintiff only alleges that they were involved after-the-fact in attempting to assist him in addressing his property claims. There are no allegations that they were involved in the packing, shipping or withholding of his property. As such, these Defendants are also properly dismissed from this action. The claims set forth against Defendants Harry and Leggore are based upon their roles in Plaintiff's grievance and appeal decisions. The failure of a prison official to act favorably on an inmate's grievance is not itself a constitutional violation. See Wilson v. Horn, 971 F.Supp. 943, 947 (E.D. Pa. 1997), aff'd, 142 F.3d 430 (3d Cir. 1998); Flanagan v. Shively, 783 F.Supp. 922, 931 (M.D. Pa. 1992), aff'd, 980 F.2d 722 (3d Cir.), cert. denied, 510 U.S. 829 (1993). Accordingly, these Defendants will also be dismissed from this action for lack of personal involvement.

**C. Deprivation of Property/Access to the Courts**

Remaining in this action is Defendant Huber. Plaintiff alleges that when he received his property following his transfer from SCI-Camp Hill to SCI-Fayette, his sunglasses and cup were broken and the following legal property was missing: (1) 17 legal books; (2) a 17-page reconsideration brief that he wanted to file with the United

States Supreme Court in the action of Jackson v. Taylor, No. 12-5092; and (3) a 24-page § 1983 civil rights complaint that he wanted to file against several SCI-Camp Hill employees.

A civil rights claim cannot be brought to vindicate a prisoner's right to property when the deprivation occurs as a result of a tortious and unauthorized act where an adequate remedy exists to compensate those who have suffered tortious loss at the hands of the state. Parratt v. Taylor, 451 U.S. 527, 543-44 (1981). The United States Supreme Court has extended Parratt to include intentional deprivations of property, holding that where a prisoner has an adequate post-deprivation remedy under state law for any loss suffered to his property, a civil rights claim is not available. Hudson v. Palmer, 468 U.S. 517, 532-33 (1984). The federal courts in Pennsylvania have recognized that both the DOC internal grievance procedure and the availability of a state tort suit in state court provide adequate post-deprivation remedies so as to satisfy due process requirements under Hudson. See, e.g., Edmonds v. Sobina, 295 F. App'x, 214, 217 n.5 (3d Cir. 2008); Austin v. Lehman, 893 F. Supp. 448, 454 (E.D. Pa. 1995); Payton v. Horn, 49 F. Supp. 2d 791, 795 (E.D. Pa. 1999). Consequently, regardless of whether the deprivation of property in the instant case was the result of intentional or negligent conduct, Jackson may not obtain relief via a civil rights complaint if he has adequate alternative remedies.

Jackson can assert any claim relating to the deprivation of his personal property

via the DOC's administrative remedy system. He is obviously aware of this remedy since he did file grievances with respect to the deprivation/loss of his property. He can also assert a loss of property claim in Pennsylvania state court. Since both of these remedies are available to him, the mere deprivation, ruining or destruction of his property is subject to dismissal.

However, Plaintiff may be able to state an access to the courts claim with respect to the denial or destruction of his legal property. Under the First and Fourteenth Amendments, prisoners retain the right of access to the courts. See Lewis v. Casey, 518 U.S. 343, 346 (1996). However, a prisoner asserting a denial of access to courts claim must satisfy the constitutional standing requirement by alleging an actual injury. Lewis, 518 U.S. at 349. To meet this requirement, a plaintiff must show that the actions of the prison officials hindered the prisoner's efforts to pursue a nonfrivolous claim. See Monroe v. Beard, 536 F.3d 198, 205 (3d Cir. 2008); Christopher v. Harbury, 536 U.S. 403, 415 (2002). Further, "the injury requirement is not satisfied by just any type of frustrated legal claim." Lewis, 518 U.S. at 354. The right of access to the courts "does not guarantee inmates the wherewithal to transform themselves into litigating engines capable of filing everything from shareholder derivative actions to slip-and-fall claims," and thus the right is limited to safeguarding prisoners' ability "to attack their sentences, either directly or collaterally, and in order to challenge the conditions of their confinement." Id. at

355. "Impairment of any *other* litigating capacity is simply one of the incidental (and perfectly constitutional) consequences of conviction and incarceration." Lewis, 518 U.S. at 349.

In the instant case, Defendants maintain that any access to the courts claim based upon the deprivation of his efforts to seek reconsideration of the denial of his petition for writ of certiorari in Jackson v. Taylor, No. 12-5092 (U.S.) fails to state a claim. With respect to Plaintiff's Supreme Court petition, a review of the docket in said action reveals that the petition was filed by Plaintiff on July 3, 2012, 2 weeks before Plaintiff's property was inventoried and packed for shipping at SCI-Camp Hill.<sup>2</sup> A review of the docket further reveals that nothing more was due to be filed by Plaintiff prior to the time the Supreme Court issued its decision denying his petition for writ of certiorari. The fact that Plaintiff may have wanted to seek reconsideration of this denial is of no consequence with respect to his access to the courts claim as he had no right to seek reconsideration of the denial. As such, he has failed to demonstrate actual injury.

With respect to his access to the courts claims pertaining to the denial of legal books and the deprivation of the civil rights complaint he prepared and wished to file against SCI-Camp Hill employees, he also fails to assert any actual injury. He fails to

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<sup>2</sup> This court is entitled to take judicial notice of public records, including docket sheets. See Dinicola v. DiPaolo, 945 F. Supp. 848, 855 n. 2 (W.D. Pa. 1996).

provide any facts with respect to how said legal books prevented him from pursuing any non-frivolous actions, and also fails to allege any facts with respect to the underlying action or the claims he wished to raise in the civil rights complaint and demonstrate how his claims were legitimate. He further fails to set forth any allegation that he now is unable to pursue his civil rights action by preparing a new civil rights complaint against the defendants he named therein. For these reasons, any access to the courts claim against Defendant Huber will be dismissed. An appropriate order follows.

UNITED STATES DISTRICT COURT  
FOR THE  
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RHONSHAWN JACKSON,

Plaintiff

v.

UNIT MANAGER WAYLIN, et al.,

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CIVIL NO. 3:CV-13-0508

(Judge Kosik)

**ORDER**

AND NOW, THIS 22<sup>nd</sup> DAY OF JANUARY, 2014, in accordance with

the accompanying Memorandum, **IT IS HEREBY ORDERED AS FOLLOWS:**

1. The Clerk of Court is directed to **strike Document 21** "Amended Complaint" from the record as a duplicate filing.
2. Defendants' motion to dismiss the amended complaint (Doc. 20) is **granted**. The amended complaint is dismissed in its entirety.
3. The Clerk of Court is directed to **close this case**.
4. Any appeal taken from this order will be deemed frivolous, without probable cause and not taken in good faith.



EDWIN M. KOSIK  
United States District Judge