

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

AARON JASON LENNON, : CIVIL NO. 3:11-CV-1165
Plaintiff, :
 :
v. : (Judge Munley)
 :
 :
R.M. LAWLER, et al., :
Defendants :

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MEMORANDUM

On June 20, 2011, Aaron Jason Lennon (“Lennon”), an inmate at the State Correctional Institution at Huntingdon (“SCI-Huntingdon”), filed this civil rights action (Doc. 1), naming a number of individuals employed at SCI-Huntingdon. Lennon seeks to proceed in forma pauperis. (Doc. 2). Obligatory preliminary screening reveals that the complaint is subject to dismissal pursuant to 28 U.S.C. §1915(e)(2)(B)(ii).

I. Allegations of the Complaint

Lennon alleges that there were two incidents whereby he received misconducts, one he “felt he didn’t deserve” and the other he “did deserve.” (Doc. 1, at 2-4.) He claims that defendants did not comply with the procedures applicable to misconduct appeals and, in the process, violated his due process rights. He also alleges that his requests to vacate these cases went unanswered. (Id. at 2, 5.) He seeks relief in the form of an investigation by the Grand Jury and the Court. (Id. at 6.)

II. Discussion

Section 1915(e)(2) states, in pertinent part, “the court shall dismiss the case at any

time if the court determines that (B) the action . . . (ii) fails to state a claim on which relief may be granted. . . .” 28 U.S.C. §1915(e)(2)(B)(ii). The applicable standard of review for the failure to state a claim provision is the same as the standard for a 12(b)(6) motion, which 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 as true all [factual] allegations in the complaint and all reasonable inferences that can be drawn therefrom, and view them in the light most favorable to the plaintiff.” Kanter v. Barella, 489 F.3d 170, 177 (3d Cir. 2007) (quoting Evancho v. Fisher, 423 F.3d 347, 350 (3d Cir. 2005)). Although the court is generally limited in its review to the facts contained in the complaint, it “may also consider matters of public record, orders, exhibits attached to the complaint and items appearing in the record of the case.” Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1384 n. 2 (3d Cir. 1994); see also In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1426 (3d Cir. 1997).

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 v. County of Allegheny, 515 F.3d 224, 232 (3d Cir. 2008) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)). The plaintiff must present facts that, if true, demonstrate a plausible right to relief. See FED. R. CIV. P. 8(a) (stating that the complaint should include “a short and plain statement of the claim showing that the pleader is entitled to relief”); Ashcroft v. Iqbal, ---U.S. ----, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868

(2009) (explaining that Rule 8 requires more than “an unadorned, the-defendant unlawfully-harmed-me accusation”); Twombly, 550 U.S. at 555 (requiring plaintiffs to allege facts sufficient to “raise a right to relief above the speculative level”). Under this liberal pleading standard, courts should generally grant plaintiffs leave to amend their claims before dismissing a complaint that is merely deficient. See Grayson v. Mayview State Hosp., 293 F.3d 103, 108 (3d Cir. 2002); Shane v. Fauver, 213 F.3d 113, 116-17 (3d Cir. 2000). A complaint that does not establish entitlement to relief under any reasonable interpretation is properly dismissed without leave to amend. Grayson., 293 F.3d at 106.

Lennon alleges that defendants violated his due process rights in failing to comply with misconduct appeal procedures. His contention requires a determination of whether he had a protected liberty interest and, if so, what process was mandated to protect it. See Sandin v. Conner, 515 U.S. 472, 484 (1995); Shoats v. Horn, 213 F.3d 140, 143 (3d Cir. 2000). Importantly, due process requirements apply only when the prison’s actions impose “an atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.” Sandin, 515 U.S. at 483. “[T]he baseline for determining what is “atypical and significant”-the “ordinary incidents of prison life”-is ascertained by what a sentenced inmate may reasonably expect to encounter as a result of his or her conviction in accordance with due process of law.” Griffin v. Vaughn, 112 F.3d 703, 706 (3d Cir. 1997) (quoting Sandin, 515 U.S. at 486).

He asserts only that he has been placed in disciplinary custody for the misconducts.

However, disciplinary custody does not impose an atypical or significant hardship in relation to the ordinary incidents of prison life. See Griffin, 112 F.3d 703 (finding placement in restrictive confinement for periods of up to one year, and even more, does not trigger a constitutionally protected liberty interest because it does not constitute an atypical and significant hardship in relation to the ordinary incidents of prison life). Accordingly, Lennon is not entitled to any relief even if the disciplinary proceedings did not meet the mandates of the due process clause.

Further, to the extent that Lennon requests that the Grand Jury and Court conduct an investigation, this is relief that simply cannot be granted. The decisions to investigate and prosecute are solely within the discretion of a prosecutor. United States v. Batchelder, 442 U.S. 114, 124 (1979); Community for Creative Non-Violence v. Pierce, 786 F.2d 1199, 1201 (D.C.Cir. 1986) (“The power to decide when to investigate, when to prosecute, lies at the core of the Executive’s duty to see to the faithful execution of the laws . . . when reviewing the exercise of that power, the judicial power is, therefore, at its most limited.”) See also Forsyth v. Kleindienst, 599 F.2d 1203, 1215 (3d Cir. 1979).

Because the allegations of the complaint fail to establish entitlement to relief under any reasonable interpretation, the complaint is properly dismissed without leave to amend. Grayson, 293 F.3d at 106.

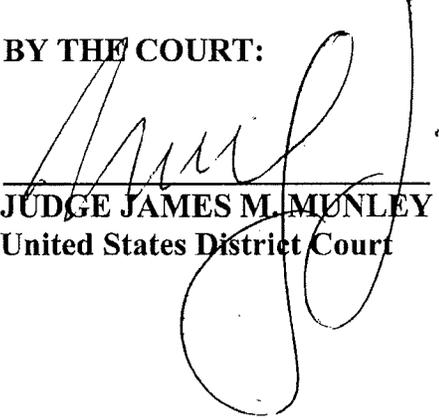
III. Conclusion

Based on the foregoing, plaintiff’s complaint will be dismissed pursuant to 28 U.S.C.

§1915(e)(2)(B)(ii).

An appropriate order will issue.

BY THE COURT:



JUDGE JAMES M. MUNLEY
United States District Court

Dated: July 5, 2011

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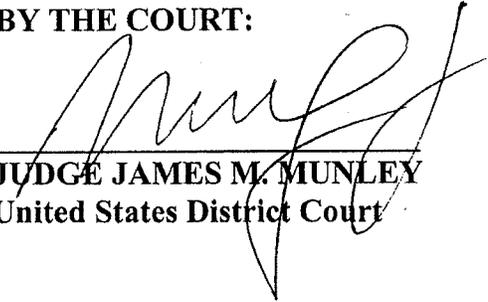
ORDER

AND NOW, to wit, this 5th day of July 2011, upon consideration of plaintiff's complaint (Doc. 1) and the application to proceed in forma pauperis (Doc. 2), it is hereby

ORDERED that:

1. The motion to proceed in forma pauperis (Doc. 2) is GRANTED for the sole purpose of the filing of the action.
2. Plaintiff's complaint is hereby DISMISSED pursuant to 28 U.S.C. §1915(e)(2)(B)(ii).
3. Any appeal from this order is DEEMED frivolous and not in good faith. See 28 U.S.C. § 1915(a)(3).

BY THE COURT:



JUDGE JAMES M. MUNLEY
United States District Court