

OFFICE OF THE CLERK

UNITED STATES COURT OF APPEALS

Marcia M. Waldron
Clerk

FOR THE THIRD CIRCUIT
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April 29, 2003

Mrs. Mary D'Andrea
U.S. District Court for the Middle District of Pennsylvania
Middle District of Pennsylvania
228 Walnut Street
Room 1060
Harrisburg, PA 17108

RE: Docket No. 02-2204
Moss vs. Schoonover
D. C. CIV. No. 02-cv-00532

Dear Mrs. D'Andrea:

Enclosed is a certified copy of the judgment in the above-entitled case(s), together with copy of the opinion. The certified judgment is issued in lieu of a formal mandate and is to be treated in all respects as a mandate.

Counsel are advised of the issuance of the mandate by copy of this letter. A copy of the certified judgment is also enclosed showing costs taxed, if any.

Very truly yours,
MARCIA M. WALDRON
Clerk


By: Nicole M. Bruno
Case Manager

Enclosure

cc:

Mr. Craig Moss

APS-125

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 02-2204

CRAIG MOSS,
Appellant

FILED
HARRISBURG, PA

APR 30 2003

MARY E. D'ANDREA, CLERK
Per 
Deputy Clerk

v.

RANDY SCHOONOVER; NORMAN DEMMING;
KENNETH BURNETT; THOMAS STACHELEK;
THOMAS LEVAN; THOMAS WASILEWSKI;
WAYNE COLE; JOHNNY L. JOHNSON;
THOMAS L. JAMES; ROBERT S. BITNER;
JEFFERY BEARD

On Appeal From the United States District Court
For the Middle District of Pennsylvania
(D.C. Civ. No. 02-cv-00532)
District Judge: Honorable Sylvia H. Rambo

Submitted For Possible Dismissal Under 28 U.S.C. § 1915(e)(2)(B)
February 27, 2003

Before: SLOVITER, MCKEE and SMITH, Circuit Judges

JUDGMENT

This case 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). On consideration whereof, it is now here

ORDERED AND ADJUDGED by this Court that the appeal is dismissed under 28

U.S.C. §1915(e)(2)(B). All of the above in accordance with the opinion of this Court.

ATTEST:

Marcia M. Waldron

Clerk

DATED: March 18, 2003

Certified as a true copy and issued in lieu
of a formal mandate on April 29, 2003.

Teste: *Marcia M. Waldron*

Clerk, United States Court of Appeals
for the Third Circuit

APS-125

UNREPORTED-NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 02-2204

CRAIG MOSS,
Appellant

v.

RANDY SCHOONOVER; NORMAN DEMMING;
KENNETH BURNETT; THOMAS STACHELEK;
THOMAS LEVAN; THOMAS WASILEWSKI;
WAYNE COLE; JOHNNY L. JOHNSON;
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Before: SLOVITER, MCKEE and SMITH, Circuit Judges.

(Filed: March 18, 2003)

OPINION

PER CURIAM

Appellant, Craig Moss, appeals from the District Court's order dismissing his complaint for failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). For the reasons that follow, we will dismiss the appeal for lack of legal merit pursuant to 28 U.S.C. § 1915(e)(2)(B).

I.

Moss filed the underlying civil rights complaint pursuant to 42 U.S.C. §§ 1983, 1985 and 1986, asserting that the above-named defendants violated his First and Fourteenth Amendment rights by retaliating against him for utilizing the prison's inmate grievance procedure and for attempting to prosecute charges against a corrections officer who, Moss alleges, verbally "assaulted" him while he was housed at SCI-Dallas. More specifically, Moss asserts that defendants retaliated against him by placing him in administrative custody and by subsequently having him transferred to another institution. In addition to declaratory relief, Moss sought compensatory and punitive damages.

Having concluded that appellant failed to demonstrate that his exercise of a constitutional rights was a substantial or motivating factor in the challenged actions, the District Court determined that Moss did not assert a proper claim of retaliation against the defendants. Additionally, to the extent that Moss was alleging that defendants' actions denied him access to the courts, the District Court concluded that such a claim was without merit as Moss failed to allege an actual injury as required by Lewis v. Casey, 518 U.S. 343 (1996). This timely appeal followed.

II.

Our review of the District Court's *sua sponte* dismissal for failure to state a claim, which was authorized by 28 U.S.C. § 1915(e)(2)(B)(ii), like that for dismissal under Fed. R. Civ. P. 12(b)(6), is plenary. See Allah v. Seiverling, 229 F.3d 220, 223 (3d Cir. 2000). “[W]e must accept as true the factual allegations in the complaint and all reasonable inferences that can be drawn therefrom.” Id. (quoting Nami v. Fauver, 82 F.3d 63, 65 (3d Cir.1996)). A pro se plaintiff's complaint is held to an especially liberal standard, and should only be dismissed for failure to state a claim if it appears “beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” Estelle v. Gamble, 429 U.S. 97, 106 (1976) (citation omitted).

In Rausser v. Horn, 241 F.3d 330 (3d Cir. 2001), we held that, to prevail on a retaliation claim, a prisoner must prove that the conduct which led to the alleged retaliation was constitutionally protected, that the prisoner suffered some “adverse action” at the hands of prison officials, and that exercise of the constitutional right was a substantial or motivating factor in the challenged action. After careful review of the record and Moss’ submission, we likewise conclude that Moss has failed to allege a viable retaliation claim.

Contrary to the District Court’s conclusion, Moss argues that a prisoner’s use of the inmate grievance system to redress grievances is a right protected by the First Amendment. Indeed, several circuit courts of appeals have explicitly so held. See, e.g., DeWalt v. Carter, 224 F.3d 607, 618 (7th Cir. 2000)(Prisoners have a constitutional right

of access to the courts that, by necessity, includes the right to pursue the administrative remedies that must be exhausted before a prisoner can seek relief in court.); Herron v. Harrison, 203 F.3d 410, 415 (6th Cir. 2000)(an inmate has an undisputed First Amendment right to file grievances against prison officials on his own behalf); Graham v. Henderson, 89 F.3d 75, 80 (2d Cir. 1996), citing Franco v. Kelly, 854 F.2d 584 (2d Cir.1988)(retaliation against a prisoner for pursuing a grievance violates the right to petition government for the redress of grievances guaranteed by the First and Fourteenth Amendments and is actionable under § 1983); Bradley v. Hall, 64 F.3d 1276, 1279 (9th Cir. 1995)(citing Valandingham v. Bojorquez, 866 F.2d 1135, 1138 (9th Cir.1989)(same)). Additionally, as the District Court recognized, a prisoner litigating a retaliation claim need not prove that he has a liberty interest in remaining free from the challenged action. See Rausser, 241 F.3d at 333.

Nonetheless, Moss' retaliation claim falters insofar as he has failed to demonstrate that his filing of a grievance against the corrections officer was a "substantial or motivating" factor in the decision to place him in administrative custody and, ultimately, to transfer him to another facility. The documentary evidence submitted by Moss himself demonstrates that he can prove no set of facts which would entitle him to relief. Moss attached to his complaint copies of his grievance, appeals, institutional responses and reports, and even an affidavit from another inmate which Moss characterizes as one submitted pursuant to Federal Rule of Civil Procedure 56. From a review of these submissions, in conjunction with the allegations in the complaint, it is clear to us that

Moss can not carry his burden of demonstrating that he was retaliated against for his having filed a grievance against a corrections officer.

As stated by Moss, he was placed in administrative custody in the Restrictive Housing Unit after reporting an alleged verbal assault by Corrections Officer Cywinski. It appears that this placement continued while the incident was being investigated and that the Prison Review Committee eventually recommended that Moss be transferred to another institution to protect the safety of an inmate who allegedly failed to corroborate Moss' version of the incident and to effect a separation between Moss and the corrections officer involved. Even accepting Moss' contention, supported by the "Rule 56 Affidavit" of inmate Lodor, that Lodor did not fear for his safety, prison officials still had reasons for housing Moss in administrative custody and in eventually transferring him to another institution that were reasonably related to legitimate penological interests, namely, the need to investigate the incident reported by Moss and the desire to separate Moss from a corrections officer he allegedly had run into problems with. Moss has simply offered nothing to demonstrate that his invocation of the grievance procedure itself was a substantial and motivating factor behind challenged actions.

We recognize, of course, that retaliation claims often involve disputed issues of fact which make *sua sponte* dismissals unlikely. Moreover, we are mindful of the fact that a court normally is not to consider matters outside the pleadings unless it is ruling on a motion for summary judgment, and the parties have been provided notice and an

opportunity to respond and present supporting materials. However, where, as here, the plaintiff himself has submitted additional materials and has addressed the information contained in those materials, we see no need to waste judicial resources in remanding this matter to allow it to proceed further where the same material would most certainly be offered to support a proper grant of summary judgment in favor of the defendants. See, e.g., In re Rockefeller Center Properties, Inc. Securities Litigation, 311 F.3d 198, 205 - 206 (3d Cir. 2002), citing In re Burlington Coat Factory Securities Litigation, 114 F.3d 1410, 1420, 1426 (3d Cir.1997)(court may consider a document “integral to or explicitly relied upon” in the complaint).

Accordingly, we conclude that Moss’ retaliation claim is without merit. We likewise reject the remaining contentions argued by appellant in his memorandum in opposition to the listing of this appeal for summary disposition as they are meritless and warrant no further discussion.

III.

Having found that appellant’s appeal lacks an arguable basis in fact or law, we will dismiss it pursuant to 28 U.S.C. § 1915(e)(2)(B).